

**LIBRARY**  
**SUPREME COURT, U. S.**  
**VOLUME II**

**TRANSCRIPT OF RECORD**

---

---

**Supreme Court of the United States**

**OCTOBER TERM, 1967**

**No. 69**

---

**VOLKSWAGENWERK AKTIENGESELLSCHAFT,  
PETITIONER,**

*vs.*

**FEDERAL MARITIME COMMISSION, ET AL.**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

---

**PETITION FOR CERTIORARI FILED MARCH 20, 1967**  
**CERTIORARI GRANTED JUNE 12, 1967**

**JOINT APPENDIX**  
**(Vol. II—Pages 381-750, Incl.)**

---

IN THE  
**United States Court of Appeals**  
**For the District of Columbia Circuit**

**No. 19,840**

---

**VOLKSWAGENWERK AKTIENGESellschaft,**

*Petitioner,*

*against*

**FEDERAL MARITIME COMMISSION and UNITED STATES OF AMERICA,**

*Respondents,*

**PACIFIC MARITIME ASSOCIATION and MARINE TERMINALS CORPORATION,**

*Intervenors.*

---

**On Petition to Review and Set Aside Order of the  
Federal Maritime Commission**

---

**STEPTOE & JOHNSON**  
1250 Connecticut Avenue, N.W.  
Washington, D. C. 20036

**HERZFELD & RUBIN**  
40 Wall Street  
New York, N. Y. 10005

**PILLSBURY, MADISON & SUTRO**  
225 Bush Street  
San Francisco, California 94104

*Attorneys for Petitioner*

**WALTER H. MAYO, III**  
Federal Maritime Commission  
1321 H Street, N.W.  
Washington, D. C. 20573

**IRWIN A. SEIBEL**  
United States Department of Justice  
Washington 25, D. C.

*Attorneys for Respondents*

**LILLICK, GEARY, WHEAT, ADAMS  
& CHARLES**  
311 California Street  
San Francisco, California 94104

*Attorneys for Intervenor Pacific  
Maritime Association*

**McCUTCHEN, DOYLE, BROWN,  
TRAUTMAN & ENERSEN**  
601 California Street  
San Francisco, California 94108

*Attorneys for Intervenor Marine  
Terminals Corporation*

---



# INDEX

|  | PAGE |
|--|------|
| Docket Before the Commission .....   | 1a   |
| Complaint .....  | 12a  |
| Exhibit A—Libel .....  | 18a  |
| Exhibit B—Answer to Libel .....  | 25a  |
| Exhibit C—Petition to Implead Volkswagen-<br>werk A. G. ....   | 28a  |
| Exhibit D—Answer of Complainant .....  | 31a  |
| Answer to Complaint .....  | 40a  |
| Petition of Pacific Maritime Association to Intervene<br>in Opposition to the Complaint .....                              | 43a  |
| Exhibit A—Letter, Dated September 28, 1961   | 50a  |
| Exhibit B—Letter, Dated December 14, 1961 ..   | 52a  |
| Reply of Complainant to Petition of Pacific Maritime<br>Association to Intervene in Opposition to the Com-<br>plaint ..... | 58a  |
| Application for Subpoena Duces Tecum .....   | 65a  |
| Ruling on Application for Subpoena Duces Tecum ..  | 68a  |
| Excerpts from Testimony .....  | 69a  |
| Complainant's Proposed Findings of Fact and Con-<br>clusions of Law .....  | 596a |
| Initial Decision of Benjamin A. Theeman, Examiner  | 611a |
| Appendix I—(Same as Exhibits 5-A and 5-B,<br>printed herein at pages 466a to 479a.)  |      |
| Appendix II .....  | 657a |
| Complainant's Memorandum of Exceptions to Con-<br>clusions, Findings and Statements in Initial Deci-<br>sion .....         | 659a |

|   | PAGE |
|---|------|
| Exceptions and Brief in Support of Exceptions of Respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) | 665a |
| Report of Commission .....  | 666a |
| Commissioner John S. Patterson—Dissenting ..  | 678a |
| Commissioner Hearn—Dissenting .....   | 722a |
| Order of Commission .....   | 729a |
| Petition for Review .....   | 730a |
| Stipulation as to Issues and Procedures to be Followed .....  | 745a |

## TESTIMONY

### COMPLAINANT'S WITNESSES

#### Kenneth Frederick Saysette:

|                |     |
|----------------|-----|
| Direct .....   | 69a |
| Cross .....    | 83a |
| Redirect ..... | 84a |
| Recross .....  | 87a |

#### Peter N. Teige:

|                |      |
|----------------|------|
| Direct .....   | 87a  |
| Cross .....    | 117a |
| Redirect ..... | 129a |
| Recross .....  | 134a |

#### Fred R. Smith:

|              |      |
|--------------|------|
| Direct ..... | 134a |
| Cross .....  | 136a |

#### Ellet G. Horsman:

|                |      |
|----------------|------|
| Direct .....   | 137a |
| Cross .....    | 154a |
| Redirect ..... | 162a |

|                      | PAGE |
|----------------------|------|
| Peter Curtis:        |      |
| Direct .....         | 163a |
| Cross .....          | 170a |
| Frederick F. Noonan: |      |
| Direct .....         | 174a |
| Cross .....          | 176a |

WITNESS FOR INTERVENOR, PACIFIC  
MARITIME ASSOCIATION

|                |      |
|----------------|------|
| Paul St. Sure: |      |
| Direct .....   | 178a |
| Cross .....    | 227a |

RESPONDENT'S WITNESS

|                        |      |
|------------------------|------|
| Ellet G. Horsman:      |      |
| By Examiner .....      | 237a |
| By Mr. Zimmerman ..... | 240a |
| Cross .....            | 241a |

EXHIBITS

|   |      |
|---|------|
| 1-A—Memorandum of Understanding Between Pacific Maritime Association and International Longshoremen's and Warehousemen's Union .....    | 243a |
| 1-B—Memorandum of Agreement on Mechanization and Modernization, October 18, 1960 and Memorandum of Understanding attached thereto ..... | 262a |
| 1-C—ILWU-PMA Supplemental Agreement on Mechanization and Modernization, Dated November 15, 1961 .....                                   | 279a |
| 1-D—Schedule A—Death and Disability Benefits ..   | 310a |

|   |      |
|---|------|
| 1-E—Schedule B—Vesting Benefits .....   | 317a |
| 1-F—Schedule C—Supplemental Wage Benefits ...   | 323a |
| 1-G—Letter, Dated November 15, 1961 .....   | 336a |
| 1-H—Letter, Dated November 15, 1961 .....   | 338a |
| 1-I—Letter, Dated November 15, 1961 .....   | 340a |
| 1-J—First Amendment of ILWU-PMA Supple-<br>mental Agreement on Mechanization and Moderni-<br>zation ..... | 343a |
| 2-D—Minutes of Meeting of December 12, 1962 ....  | 345a |
| 2-F—Minutes of Meeting of July 3, 1962 .....  | 354a |
| 2-H—Minutes of Meeting of December 13, 1961 .....   | 356a |
| 2-I—Minutes of Meeting of November 7, 1961 .....  | 358a |
| 2-K—Minutes of Meeting of July 11, 1961 .....   | 365a |
| 2-L—Minutes of Meeting of March 8, 1961 .....   | 366a |
| 2-N—Minutes of Meeting of January 16, 1961 .....  | 369a |
| 2-O—Minutes of Meeting of January 10, 1961 .....  | 372a |
| 2-P—Minutes of Meeting of January 6, 1961 .....   | 378a |
| 3—By-Laws as Amended of Pacific Maritime Associ-<br>ation .....   | 381a |
| 4—Pacific Coast Longshore Agreement .....   | 411a |
| 5-A—Report of PMA Committee, Dated January 4,<br>1961 .....   | 466a |
| 5-B—Statement of Minority Opinion on ILWU<br>Funding .....  | 475a |
| 6—Letter, Dated January 11, 1961 .....  | 479a |
| 7—Letter, Dated January 17, 1961 .....  | 481a |
| 9—Letter, Dated March 1, 1961 .....   | 486a |
| 10—Letter, Dated March 3, 1961 .....  | 487a |

|   | PAGE |
|---|------|
| 11—Letter, Dated March 24, 1961 .....                                     | 492a |
| 12—Letter, Dated March 23, 1961 .....                                     | 493a |
| 13—Letter, Dated May 1, 1961 .....  | 495a |
| 14—Letter, Dated May 1, 1961 .....  | 496a |
| 20—Minutes of Meeting of August 1, 1961 .....                             | 498a |
| 21—Memorandum of August 15, 1961 .....                                    | 502a |
| 22—Memorandum of October 24, 1961 .....                                   | 507a |
| 25—Letter, Dated November 29, 1961 .....                                  | 510a |
| 26—Letter, Dated November 29, 1961 .....                                  | 511a |
| 28—Memorandum of February 8, 1962 .....                                   | 515a |
| 31—Memorandum of March 27, 1962 .....                                     | 517a |
| 32—Letter, Dated December 10, 1962 .....                                  | 519a |
| 35—Letter, Dated January 17, 1961 .....                                   | 521a |
| 36—Letter, Dated February 3, 1961 .....                                   | 524a |
| 39—Letter, Dated February 9, 1961 with attachment<br>thereto .....        | 525a |
| 40—Letter, Dated March 6, 1961 with attachment<br>thereto .....           | 530a |
| 41—Letter, Dated March 13, 1961 with attachment<br>thereto .....          | 534a |
| 46—Letter, Dated March 3, 1961 with attachment<br>thereto .....           | 538a |
| 47—Letter, Dated July 3, 1961, with attachment<br>thereto .....           | 554a |
| 48—Errata Sheet, Dated April 25, 1962, with attach-<br>ment thereto ..... | 571a |
| 55—Revised Payment Procedures, Dated March 16,<br>1961 .....              | 588a |
| 56—Memorandum of December 14, 1961 .....                                  | 594a |

Proceedings in the United States Court of Appeals  
for the District of Columbia Circuit

Joint Appendix—Volumes I and II—see separate  
indices

Additional excerpts of the proceedings before the  
Federal Maritime Commission :

|  |     |     |
|--|-----|-----|
| Excerpts from testimony of _____   | 92  | 751 |
| Peter N. Teige—  |     |     |
| direct (continued) _____   | 121 | 751 |
| cross (continued) _____  | 140 | 753 |
| Fred R. Smith—   |     |     |
| direct (continued) _____   | 181 | 759 |
| cross (continued) _____  | 191 | 760 |
| redirect (continued) _____   | 197 | 761 |
| Ellet G. Horsman—  |     |     |
| direct (continued) _____   | 205 | 761 |
| redirect (continued) _____   | 266 | 766 |
| Peter Curtis—  |     |     |
| direct (continued) _____   | 277 | 767 |
| cross (continued) _____  | 302 | 767 |
| Frederick F. Noonan—   |     |     |
| cross (continued) _____  | 326 | 768 |
| Exhibit 4—Pacific Coast Longshore Agreement<br>—excerpt—Section 7—Vacations _____            |     | 769 |
| Exhibit 50—Letter from Seattle Stevedore Co.<br>to Mr. Peter Curtis, dated November 30, 1961 |     | 776 |
| Exhibit 57—Memorandum of K. F. Saysette,<br>Pacific Maritime Association to "Members" _____  |     | 777 |
| Opinion, per curiam _____  | 751 | 779 |
| Judgment _____   | 776 | 802 |
| Clerk's certificate (omitted in printing) _____  | 779 | 802 |
| Order allowing certiorari _____  | 780 | 803 |



**Exhibit 3**  
**(BY-LAWS AS AMENDED**  
**OF**  
**PACIFIC**  
**MARITIME**  
**ASSOCIATION**

---

**INCORPORATED JUNE 3, 1949—APRIL 1960)**

**[3] BY-LAWS**  
**AS AMENDED**  
**OF**  
**PACIFIC MARITIME ASSOCIATION**

---

**ARTICLE I.**

The corporate powers, business and Board of property of this corporation shall be Directors vested in and exercised, conducted and controlled by a Board of twenty-one (21) Directors, who need not be members of the corporation.

**ARTICLE II.**

***Officers***

The officers of the corporation, none of whom need be a member of the Board of Directors, shall consist of a president, three vice presidents, a secretary, a treasurer, and such other officers as the Board of Directors shall from time to time create. All of the officers of the corporation shall hold office at the pleasure of the Board of Directors.



*Exhibit 3*

**ARTICLE III.**

*Powers and Duties of Directors*

Section 1. The powers and duties of the Board of Directors are:

(a) To appoint and remove at pleasure all officers, agents and employees of [4] the corporation, other than directors, prescribe such duties for them as may not be inconsistent with law and these by-laws, fix their compensation and require from them security for faithful service;

(b) To conduct, manage and control the affairs and business of the corporation, and to make such regulation therefor, not inconsistent with law and these by-laws, as they may deem best;

(c) To approve and admit to membership persons, firms, associations or corporations, qualified therefor under the provisions of the Articles of Incorporation of this corporation and these by-laws;

(d) To borrow money and incur indebtedness for the purpose of the corporation, and to cause to be executed and delivered therefor in the name of the corporation promissory notes and other evidence of debt;

(e) To levy and assess and collect, or provide for the collection of, dues or assessments in accordance with the provisions of these by-laws; but the Board of Directors shall not have the power to levy, assess or collect dues or assessments in excess of a maximum rate to [5] be fixed, at a regular or special meeting, by the vote of members holding a majority of the voting power of the entire membership;

(f) To prepare, approve and file with the secretary a roster of the membership, classified in accordance with the provisions of Article IV, Section 3 and to prepare, approve

*Exhibit 3*

and file with the secretary a roster of the membership of each port area defined herein in accordance with the provisions of Article VIII, Section 2, hereof;

(g) To transact all of the affairs of the corporation.

**ARTICLE IV.***Qualifications of Members*

Section 1. Any firm, person, association or corporation engaged in the business of carrying passengers or cargo by water to or from any port on the Pacific Coast of the United States (except Alaskan ports), or any agent of any such firm, person, association or corporation, and any firm, person, association or corporation employing longshoremen or other shoreside employees in operations at docks or marine terminals at any such port and any association or corporation composed of employers of such longshoremen or other shoreside employees [6] shall be eligible for membership in this corporation.

*Membership Groups*

Section 2. For the purposes of representation on the Board of Directors, convenience in group consideration of corporate problems and activities, and determinations of voting power, the members shall be organized into eight (8) groups as follows:

*Passenger Line Group*

(a) The passenger line group, consisting of members operating American flag passenger vessels as defined in the navigation laws of the United States to or from Pacific Coast ports, and member agents of non-members engaged in such operation.

*Exhibit 3*

*Intercoastal Line Group*

(b) The intercoastal line group, consisting of members engaged in the operation of vessels carrying freight between ports on the Pacific Coast and ports on the Atlantic or Gulf Coasts of the United States, and member agents of non-members engaged in such operation.

*Coastwise Group*

(c) The coastwise group, consisting of members engaged in the operation of vessels carrying freight between ports of the Pacific Coast north of Mexico (except on voyages between ports of Puget Sound and ports in Alaska), and member agents of non-members engaged in such operation.

*[7] Alaska Area Group*

(d) The Alaska area group, consisting of members engaged in the operation of vessels on voyages between ports of Puget Sound and ports in Alaska, and member agents of non-members engaged in such operation.

*Offshore Group*

(e) The offshore group, consisting of members engaged in the operation of American flag vessels carrying freight between ports on the Pacific Coast of the United States and foreign ports or Hawaii or ports in the Island Territories, or possessions of the United States, and member agents of non-members engaged in such operation.

*Foreign Line Group*

(f) The foreign line group, consisting of members engaged in the operation of foreign flag vessels to or from any port on the Pacific Coast of the United States except

*Exhibit 3*

Alaskan ports, and member agents of non-members engaged in such operation.

*Stevedore Group*

(g) The stevedore group, consisting of members engaged in the business of loading or discharging dry cargo vessels at any port on the Pacific Coast of the United States, except Alaskan ports.

*Terminal Group*

(h) The terminal group, consisting of members engaged in the operation of any marine terminal at a port on the [8] Pacific Coast of the United States, except Alaskan ports.

*Membership Classification and Roster*

Section 3. Members shall be classified in any one or more of the groups referred to in this Article in accordance with their respective operations and activities, each member being eligible to be classified in any one or more of such groups for which its operations or activities may qualify it, and the Board of Directors shall cause to be prepared, approved, and filed with the secretary, a roster of the membership classified in accordance with the provisions of this Article, and shall cause such roster to be amended from time to time to reflect the membership of each of said groups.

**ARTICLE V.***Director Representation*

Section 1. The Directors shall be twenty-one (21) in number; they shall be selected as follows:

Two by the passenger line group, three by the inter-coastal line group, one by the coastwise group, one by the Alaska area group, four by the offshore group, two by the

*Exhibit 3*

foreign line group, two by the stevedore group, two by the terminal group; and one by each of the area memberships.

*Alternate Directors*

Each Director shall by written designation filed with the Secretary of this [9] Corporation name his alternate, which designation may be revoked or changed at any time by written notice filed with the secretary at any meeting of the Board of Directors; in the absence of a Director, his alternate shall constitute a Director in his place and stead and shall exercise all of the duties, powers and functions of such absent Director at such meeting.

*Selection of Membership Group Chairman*

Section 2. Each of the membership groups (not limited to those specified in Article IV, Section 2) shall appoint its own chairman, and, in the case of an area membership, the said chairman shall also be chairman of the executive committee for such area, and establish its own rules of procedure for the selection of Directors and consideration of such matters as may come before the group for consideration. Notwithstanding the provisions of Article VI, in the selection of Directors, each member of the group shall be entitled to one vote and to one vote only.

*Selection of Directors*

Section 3. Directors shall be selected annually, on or before the first day of March of each year. Meetings shall be held of the memberships of the passenger line group, the intercoastal line group, the coastwise group, the Alaska group, the offshore group, the foreign [10] line group, the stevedore group and the terminal group and of the memberships of the port areas of Southern California, of Northern California, of Oregon and Columbia River and of Washington at which Directors shall be selected and each such membership shall cause the Directors selected at such meeting to be certified in writing to the Board of



*Exhibit 3*

Directors and the membership at or before the annual meeting of members. The directors so selected shall take office at the conclusion of the annual meeting of members and shall hold office until the next succeeding annual meeting of members or until election of their successors.

*Vacancies in the Board of Directors*

Section 4. When any vacancy occurs in the office of Director, such vacancy shall be filled by the group which selected the Director.

Section 5. A vacancy in the Board of Directors shall be deemed to have occurred whenever a Director resigns, which he may do either by presenting his written or oral resignation to the Board or by mailing or telegraphing his resignation to the corporation, or whenever a Director dies, or by judgment of a competent court is declared incompetent or insane, or whenever any vacancy is created in accordance with [11] any law of the State of California. Unless otherwise provided herein, any such resignation shall become effective when presented, mailed or telegraphed as aforesaid.

**ARTICLE VI.***Voting Power*

Section 1. Each member of this corporation shall have one vote. In addition each member shall have one vote for each full one hundred thousand (100,000) tons (or such other unit of measurement as the Board of Directors may designate for cargo of which tonnage is not an appropriate measure) of cargo loaded and/or discharged by or for such member or its principal during the preceding calendar year at Pacific Coast ports of the United States other than Alaska ports to or from vessels owned, operated or managed by such member; provided, however, that in determining the tonnage of cargo handled by any member in the stevedore group or the terminal group there shall be excluded

*Exhibit 3*

the cargo handled by it for any member in any other member group; and each member of the passenger line group, coastwise group, intercoastal line group, Alaska group and offshore group shall have in addition a number of votes equal to the average number of seafaring employees employed under [12] collective bargaining contracts executed on behalf of such member by the corporation (or in respect to whom the corporation has been authorized by such member to conduct collective bargaining in its behalf) on vessels operated by such member during the preceding calendar quarter year divided by one hundred.

*Certification of Tonnage and Personnel*

Section 2. The Board of Directors shall have the power by resolution to establish general rules for the purpose of ascertaining and determining for voting purposes, the tonnage (or other measurement designated by the Board of Directors) of cargo handled and average employment of seafaring personnel. Each member shall report to the secretary of the corporation on or before the 20th day of each month the tonnage (or other designated measurement of cargo) loaded or discharged by or for such member at Pacific Coast ports of the United States other than Alaska ports during the preceding calendar month (agent members reporting separately the tonnage or other designated measurement of cargo so loaded or discharged on behalf of the principals on whose behalf they are acting as members), and the secretary shall certify to the Board of Directors in advance of the annual meeting the tonnage or other [13] designated measurement of cargo so loaded and/or discharged by or for each voting member during the preceding calendar year and the tonnage or other designated measurement of cargo so loaded and/or discharged for principals on whose behalf agent members are acting during such preceding calendar year; and each member of the passenger line group, coastwise group, Alaska group, intercoastal line



*Exhibit 3*

group and offshore group shall report to the secretary of the corporation on or before the 20th day of each month the number of seafaring employees employed by it under contracts executed on its behalf by the corporation (or in respect to whom the corporation has been authorized by such member to engage in collective bargaining on its behalf) on vessels operated by such member during the preceding calendar month, and promptly after the expiration of each quarter of each calendar year the secretary shall report to the Board of Directors the average number of such seafaring employees so employed on vessels of each such member during the preceding quarter. The Board of Directors shall, based upon such reports of the secretary and any other source which the Board of Directors shall deem proper, determine [14] from time to time as may be necessary for voting purposes, the tonnage or other designated measurement of cargo so loaded and/or discharged by each member and the average number of such seafaring personnel so employed, which determinations shall be final and conclusive upon all members.

**ARTICLE VII.***Regular Directors' Meetings*

Section 1. Meetings of the Board of Directors shall be held either at the office of the corporation or at any other place which may be designated by resolution of the Board of Directors. Regular meetings of the Board of Directors shall be held on the second Wednesday of each March, June, September and December at 10:00 o'clock A.M., without other or further notice than this by-law; provided, however, that should said meeting day at any time fall upon a legal holiday such meeting shall be held on the next day thereafter which is not a legal holiday at the same hour and place. A majority of the Board shall constitute a quorum for the transaction of business.

*Exhibit 3*

*Special Directors' Meetings*

Section 2. Special meetings of the Board of Directors may be called at any time by order of the President or any Vice-President of the corporation or [15] four (4) Directors. Notice of a special meeting of the Board of Directors shall state the nature of the business to be transacted and be given each Director by mailing notice thereof, at least four (4) days prior to the date of meeting, addressed to each Director at his place of business or residence as the same appears on the books of the corporation, or, in case no business or residence address of such Director appears on the books of the corporation, then directed to any address appearing on such books for such Director.

*Emergency Directors' Meetings*

In the event that the President or any Vice-President of the corporation, or any four (4) Directors thereof, shall determine that an emergency exists requiring an immediate meeting of the said Board of Directors, notice thereof may be given not less than twenty-four (24) hours prior to the hour set for said meeting by notice transmitted to the place of business of each Director either by telephone or telegraph. No notice other or further than that specified in this Section shall be required. Anything which may be done at a regular meeting of the Board of Directors may be done at a special or an adjourned meeting of the Board.

Section 3. At any meeting of the [16] Board of Directors every act or decision done or made by a majority of the Directors present shall be regarded as the act of the Board of Directors. In the absence of a quorum a majority of the Directors present may adjourn from time to time until the time fixed for the following regular meeting of the Board.

*Exhibit 3*

## ARTICLE VIII.

*Executive Committees*

Section 1. There shall be created one Coast Executive Committee and four (4) Area Executive Committees to exercise such power and authority of the Board of Directors in the management of the business and affairs of the corporation as the Board of Directors shall determine, except the power to levy dues or assessments, all subject to the authority and control of the Board of Directors. Each Executive Committee shall have power to establish rules governing its own proceedings, including the establishment of its place of meeting, any regular time of meeting and other rules concerning its procedure. Minutes shall be kept of all proceedings of any Executive Committee to be incorporated in and become a part of the minutes of the Board of Directors.

*Coast*

Section 2. The Coast Executive Committee shall consist of seven directors [17] to be appointed by the Board of Directors from its members and in addition to ex-officio members as hereinafter provided. Each member of the Coast Executive Committee shall designate in writing an alternate to act as a member of the Coast Executive Committee in the absence of the member appointing him. Upon the approval by the Board of Directors of any alternate so designated he shall be entitled to act as a member of the Coast Executive Committee in the absence of the member so designating him. Such alternate may be changed at any time by written designation of the member appointing such alternate with the approval of the Board of Directors.

*Exhibit 3*

*Area*

Each Area Executive Committee shall consist of not less than seven (7) nor more than ten (10) members to be selected by the membership in the Port Area. There shall be an Area Executive Committee for the Port Area of Southern California, one for the Port Area of Northern California, one for the Port Area of Oregon and the Columbia River, and one for the Port Area of Washington.

The membership of the Port Area of Southern California shall consist of those members doing business either [18] directly or through agents at ports in California, south of and including the Port of Hueneme, which ports are designated the Southern California Port Area.

The membership of the Northern California Area shall consist of members doing business either directly or through agents in ports of California north of Port Hueneme, which ports are designated as the Northern California Area.

The membership of the Oregon and Columbia River Port Area shall consist of members doing business either directly or through agents in ports in the State of Oregon and on the Columbia River, which ports are designated as the Oregon and Columbia River Area.

The membership of the Washington Area shall consist of members doing business either directly or through agents in ports in the State of Washington, excluding the Columbia River, which ports are designated as the Washington Area.

*Selection*

The selection of such Area Executive Committees shall be at meetings of the respective port area memberships called and held at such times and places and on such notice as the Board of Directors [19] shall prescribe, at which meetings each port area member shall be entitled to one vote. Each port area membership shall have power to estab-



*Exhibit 3*

lish rules governing its own proceedings not inconsistent with the provisions of these By-Laws or of any resolution of the Board of Directors relating thereto.

*Roster*

The Board of Directors shall cause to be prepared, approved and filed with the secretary a roster of the membership of each port area defined herein and shall cause such roster to be amended from time to time to reflect the membership of each of said groups.

Section 3. The Chairman of each Area Executive Committee shall be ex-officio, a member of the Coast Executive Committee.

## ARTICLE IX.

*President*

The President shall preside at all meetings of the Board of Directors and of the members and of all committees except Area Executive Committee; he shall sign as President of the Corporation all deeds, mortgages, leases, promissory notes and contracts, and other instruments that may require such signature, unless the Board of Directors [20] shall otherwise direct; and he shall perform such other duties as the Board of Directors may determine.

*Vice Presidents*

Each Vice-President shall exercise such authority and perform such duties as the Board of Directors shall, from time to time, by resolution prescribe.

*Secretary*

The Secretary shall keep a record of the proceedings of the Board of Directors and of meetings of the members, and such other records and minutes as the Board of Directors

*Exhibit 3*

shall require; he shall keep the records of the corporation, sign in conjunction with the President or any Vice-President, checks, drafts, notes and other instruments, unless the Board of Directors shall otherwise direct, and generally perform such duties as pertain to his office, and as may be required by the Board of Directors or by the President.

*Treasurer*

The Treasurer shall receive any monies belonging to or paid in to the corporation and deposit the same as the Board of Directors shall require; he shall supervise the accounts and books of the corporation and perform such other duties as the Board of Directors shall prescribe.

The offices of Secretary and Treasurer may, at the discretion of the Board of Directors be held by one person.

[21] ARTICLE X.

*Membership Meetings*

*Annual Meeting*

Section 1. There shall be a regular annual meeting of the members of the corporation on the second Wednesday in March of each year, at 2:00 o'clock P.M., at the office of the corporation; provided, however, that should said meeting day fall upon a legal holiday, said meeting of the members shall be held on the next day thereafter which is not a legal holiday, at the same hour and place. Notice of the annual meeting of members shall be given by mailing notice thereof stating the nature of the business to be transacted at least five (5) days prior to the date of meeting, addressed to each of the members of the corporation at his or its place of business or residence as the same appears on the books

*Exhibit 3*

of the corporation, or, in case no business or residence address of a member appears on the books of the corporation, then directed to any address appearing on the books for such member. No other or further notice shall be required.

*Special Meetings*

Section 2. Special meetings may be called and held at any time by order of the President or four (4) members of the Board of Directors, or ten (10) members of the corporation, by notice, stating the nature of the business to be [22] transacted at the meeting, given in either of the two following manners:

1. By a four days' notice in writing given to all members in the manner provided in Section 1 of this Article; or

2. By notice transmitted to the place of business of each member by telephone or telegraph at least twenty-four (24) hours prior to the hour fixed for said meeting. The latter form of notice shall be given only if the President or four (4) members of the Board of Directors, or ten (10) members of the corporation, shall determine that an emergency exists requiring an immediate meeting of the members.

Section 3. It shall be the duty of the Secretary, upon demand of the President or four (4) members of the Board of Directors or ten (10) members of the corporation, to prepare and send notice of any special meeting to each member of the corporation in accordance with Section 2 of this Article.

*Quorum*

Section 4. At all meetings of the members, persons representing a majority of the voting power of the membership, either in person or by proxy in writing, or by telegraph, shall constitute a quorum.



*Exhibit 3*

*Membership Groups Meetings*

[23] Section 5. Meetings of one or more of the membership groups (not limited to those specified in Article IV, Section 2) may be called and held at any time in like manner and upon like notice as special meetings of the entire membership. Members holding a majority of the voting power of the group or groups for which any such meeting is called, either in person or by proxy in writing or by telegram, shall constitute a quorum.

ARTICLE XI.

*Powers of Corporation*

Section 1. Subject to the provisions of Section 8 hereof, this corporation shall have power to establish policies for its members and the corporation in all matters relating to labor contracts and labor controversies and, subject to the provisions of Sections 2 and 3 of this Article, shall have power to represent and act on behalf of its members in any negotiations carried on by the corporation on behalf of its members with unions of longshoremen or other employments ashore and with unions of seamen, and any contracts, commitments or undertakings made by this corporation on behalf of its members with any union shall bind the members of this corporation; provided, however, that this corporation shall be without [24] power to bind any of its members other than passenger lines, coastwise lines, intercoastal lines, Alaska lines, and offshore lines by any contract with or commitment to any union of seamen or seafaring personnel; provided further, that this corporation shall be without power to bargain or contract with or to make any undertaking to any union of seamen or seafaring personnel on behalf of a member which has not authorized the corporation to act on its behalf in bargaining with such union; provided further, that this corporation shall be without power

*Exhibit 3*

to bargain or contract with any union of seamen or seafaring personnel with respect to wages, hours or working conditions of the crews of tankships, or crews of vessels of the foreign line group.

*Labor Practice*

Section 2. Notwithstanding any other provision of these By-Laws, this corporation shall be without power to contract with or make any commitment to any union, and no contract, commitment or undertaking which would impose any personal obligation or liability on the members of this corporation shall be made or entered into by this corporation, until and unless such contract, commitment or undertaking has been approved, at a regular or special meeting of the members, by vote of members [25] holding a majority of the voting power of the entire membership and, if such contract, commitment or undertaking relates to seafaring personnel, has been approved by the vote of members holding a majority of the combined voting power of members in the passenger line, intercoastal line, coastwise, Alaska area, and offshore groups, which shall have authorized the corporation to act in their behalf in respect thereto; or unless such contract, commitment or undertaking shall have been made or entered into by this corporation pursuant to a delegation of authority conferred by similar votes.

*Liability of Members*

Section 3. A member who has not authorized or accepted in writing such contract, commitment or undertaking and who has not voted in favor of the approval thereof or the delegation of authority with respect to the particular terms thereof shall not be bound by such contract, commitment or undertaking, if such member resigns within seven (7) days after the date of the vote thereon, whether taken in advance

*Exhibit 3*

of or during the negotiations, or subsequent to the drafting of the contract, agreement or commitment in final form and submission to the membership for approval.

[26] Section 4. No member becoming bound in respect of any contract, commitment or any other undertaking made by this corporation shall be under any liability with respect to any act taken or omitted hereunder by any other member.

*Violation of Corporation Policy*

Section 5. If any member shall violate, directly or indirectly, any rule or policy established by this corporation, or procure, encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall, directly or indirectly, violate any provision of any contract or agreement made by the corporation on its behalf with any longshoremen or other employees ashore or unions thereof, or with any seamen or unions thereof, or procure or encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall violate any other provision of these By-Laws, then, in any such event, the Board of Directors shall have the power, in its discretion, to suspend any such member for such period of time as the Board of Directors shall prescribe or to expel such member from membership in this corporation; and in addition, in any such event, that is a violation of a "rule of labor policy" adopted with such designation [27] by the Board of Directors of the corporation, such a member shall be liable to the other members who do not participate in such violation for their damages resulting from such violation. The members and the corporation recognize and acknowledge that compliance with the policies established by the corporation for its members and the corporation in matters relating to labor contracts and labor controversies and compliance with contracts commitments or undertakings made by this cor-

*Exhibit 3*

poration on behalf of its members with any labor union or organization are essential to the achievement of the purposes of the corporation in carrying on labor relations and in order to prevent injuries to the members that may be of long duration and great severity and may develop at great distances from the violation and after considerable delay and that it would be extremely difficult, if not impracticable or impossible, to fix the actual expense and damage to each of the members of the corporation that would result from any violation of a member. Therefore, the amount of damage resulting from any violation of such a "rule of labor policy" shall be payable to the corporation for the account of such members and by [28] way of liquidated damages and not as a penalty, as follows:

(a) Liquidated damages in the sum of \$5,000 for entering into or continuing in effect any contract, commitment or undertaking with any union or labor organization or group of employees or individual employee that is contrary to any such "rule of labor policy," except to the extent that such contract, commitment or undertaking is outside of the field within which such member shall have authorized this corporation to act in its behalf as recognized under Section 8 hereof.

(b) The sum of \$100 for each day of employment of each employee who is employed or paid in accordance with wages, hours or other terms or conditions of employment that is contrary to any such "rule of labor policy," except to the extent that such employment is outside of the field within which such member shall have authorized this corporation to act in its behalf as recognized under Section 8 hereof.

(c) The sum of \$5,000 for any other violation of any such "rule of labor policy," except to the extent



*Exhibit 3*

[29] such "rule of labor policy" is not binding on such member as recognized in Section 8 hereof.

Upon a claim's being made to the Board of Directors of the corporation that any member has committed a violation within the meaning of (a), (b), or (c) above, the Board of Directors shall cause investigation to be made with respect to the facts and shall determine whether or not a violation has occurred and the amount of liquidated damages to be assessed in accordance with the above provisions. A member who is claimed to have been in violation shall be given written notice of the alleged violation and of the investigation to be had with respect thereto and shall be given opportunity to appear and be heard by the Board of Directors and any agent of the Board of Directors carrying on an investigation, such appearance to be through any regular officer of the company who participates in meetings of the Association. The corporation is authorized to act on behalf of members in collecting the liquidated damages provided for herein and may use whatever means to this end it deems proper, including civil action if any member fails to pay liquidated damages as determined by the Board [30] of Directors within ten days after receipt of written demand therefor from the corporation. Should an action in court be instituted, the member in violation shall pay all costs of such litigation, including court costs, reasonable attorney's fees and all other expenses of the corporation and its counsel in connection with the collection of such liquidated damages.

Any member who commits an act that is a violation as defined in (a), (b), or (c) above shall be liable for liquidated damages as specified herein even though said member may have resigned from the corporation or have been suspended or expelled from the corporation prior to the time that the fact of violation and the amount of liquidated damages has

*Exhibit 3*

been determined in accordance with the procedures set forth herein.

*Violation of Contracts*

Section 6. If any union, its members or officials, shall violate any labor contract or award relating to wages, hours or working conditions to which contract or award this corporation is a party, or in the negotiation or administration of which contract or award this corporation has acted for a member or members, whether such violation shall be by strike, stoppage of work or in any other manner, any member affected [31] thereby shall notify the corporation. All appropriate means for peaceful settlement of any such matter shall be pursued with the appropriate officers of the union or unions involved in an endeavor to secure compliance with the terms of such agreement or award. If compliance is not secured, a meeting of the members of this corporation shall forthwith be called and all members of this corporation shall take whatever action shall be determined by a vote of the members holding at least a majority of the voting power of the membership; provided that there shall be no suspension or termination of any such contract or agreement for breach thereof without consent of members representing at least two-thirds of the voting power of the class or classes of members bound by such contract or agreement; provided further that written notice of any such vote or consent shall be immediately given by registered mail to all members and no such vote or consent shall bind any member who did not join therein and who resigns within seven (7) days after the date of mailing such notice.

*Financial Assistance to Members*

Section 7. If any labor union or association of working men or any members of such union or association shall vio-

*Exhibit 3*

late any agreement with this corporation, [32] or any agreement in the negotiation or administration of which this corporation has acted for a member or members, the Board of Directors shall, upon application, cause investigation to be made, and if the Board of Directors shall find that such union or association is at fault, and fails or refuses to make reparation or otherwise remedy such violation or refusal to the satisfaction of the Board of Directors, and if this corporation after investigation shall desire to resist the demands of such union or member thereof, this corporation shall render to such member or members of this corporation the fullest moral support, and shall pay such expenses incurred by such member in any strike, lockout or other labor trouble caused by such action of the union, association or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance.

If any labor union or association of working men or any members of such union or association shall take economic action directed against this corporation or its members, or any one or more of its members, in connection with any policy established under Section 1 of this Article for this corporation and its members in any matter relating to [33] labor contracts and labor controversies, the Board of Directors upon application shall cause an investigation to be made and, if the Board of Directors shall find that such union or association is at fault and fails or refuses to cease such economic action or to make reparation or otherwise remedy such economic action to the satisfaction of the Board of Directors and if this corporation after investigation shall desire to resist the demands of such union or association or member or members thereof, this corporation shall render to such member or members of this corporation the fullest moral support and shall pay such expenses incurred by such member in any strike, lock-



*Exhibit 3*

out, or other labor trouble caused by such action of the union, association, or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance.

If any member or members of this corporation shall have, by reason of their compliance with a labor policy established by this corporation, incurred expenses in the defense of such labor policy, or have been subjected to loss due to liability under law, and if this corporation after investigation and in accordance with policies to be laid [34] down by the Board of Directors determines that such loss and expenses should be assumed by this corporation because such member or members have incurred such losses or expenses as the result of compliance with a labor policy of the Association and have thereafter complied with the procedures laid down by the Board of Directors with respect to such loss or liability, this corporation shall render to such member or members of this corporation the fullest moral support and shall pay such expenses and reimburse such losses incurred by such member or members as shall be approved and limited by the Board of Directors of this corporation.

No personal obligation or liability on the part of any member of the corporation shall accrue under this Article XI or by virtue of any action taken by the corporation hereunder, provided, that the foregoing shall not be deemed to affect the power of the Board of Directors to levy assessments in the manner provided in Article XIII of these By-Laws for the purpose of rendering assistance to members as permitted by Article XI.

*Members Not Bound*

Section 8. Notwithstanding any other provision of these By-Laws, no foreign line member and no other member which shall not have authorized this [35] corporation to act

*Exhibit 3*

in its behalf in bargaining with a union, or unions, of seafaring personnel shall be bound by any policy established by this corporation in connection with labor contracts or labor controversies affecting or respecting seamen or seagoing personnel.

**ARTICLE XII.**

*Initiation Fee*

Each member shall pay an initiation fee which shall be not less than Two Hundred Fifty Dollars (\$250.00) and shall be such amount as may be required to insure a contribution to the assets of the corporation which will bear to the corporation's current assets a proportion substantially equivalent to the voting power of the new member; and the Board shall take into consideration in fixing such initiation fee any contribution theretofore made indirectly to the assets of the corporation.

**ARTICLE XIII.**

*Dues and Assessments*

Section 1. The members shall pay such dues and assessments as shall be fixed or levied by the Board of Directors in accordance with the provisions of this Article. Such dues and assessments shall consist of the following:

*Cargo Dues*

(a) Assessments to be fixed from time to time by the Board of Directors [36] measured by (1) each ton of cargo (or such other unit of measurement as the Board of Directors may determine to be equivalent in instances where the Board shall determine that the ton is not an appropriate unit of measurement) loaded or discharged at Pacific Coast ports of the United States other than Alaska ports by or for members or for any other firm, person, association or corporation not a member of this corporation; and (2) the man

*Exhibit 3*

hours of work performed by persons employed under the terms of collective bargaining agreements executed by this corporation, or its predecessors, or dispatched from hiring halls or other such facilities maintained and operated by this corporation in whole or in part, or by a union party to any such collective bargaining agreement. In fixing and levying the above assessments, the Board of Directors in its discretion may use either or a combination of the above bases. All sums delivered by the corporation from such assessments shall be known as "cargo dues."

*Shipping Dues*

(b) Assessments to be fixed by the Board of Directors from time to time measured by the average number of seamen or seafaring employees employed by any member company under contracts executed on its behalf by this [37] corporation, or in respect to which this corporation is authorized to bargain on behalf of such member during such period, as the Board of Directors shall fix, and all sums derived by the corporation from such assessment shall be known as "shipping dues," and

*Payroll Dues*

(c) Assessments to be fixed from time to time measured by the payroll costs of member companies in the respective port areas defined in Article VIII herein for the employment of dock or terminal labor under contracts to which this corporation is a party, such rate in each port area to be such as the Area Executive Committee with the approval of the Board of Directors deems appropriate and necessary to defray the cost of services of a local area nature carried on at the expense of this corporation, and all sums derived from such assessments shall be known as "payroll dues."

*Exhibit 3*

*Directors' Determination of Dues*

Section 2. In fixing and levying that portion of the cargo dues assessed according to tonnage handled, the Board of Directors may establish different rates per ton, or other measurement unit for different classes of cargo and different rates per ton or other measurement unit applicable to different loading or discharging handling conditions, and the Board of Directors shall also [38] fix rules for calculation of the tonnage or other measurement units loaded, discharged, and/or handled, by or for members of the corporation. In fixing and levying that portion of said cargo dues assessed according to man hours of employment, the Board of Directors shall establish rules and regulations necessary for the calculation thereof. In fixing and levying shipping dues, the Board of Directors shall establish rules for the calculation of the average number of seamen or seafaring employees employed by member companies. In fixing and assessing payroll dues, the Board of Directors shall establish rules to be uniformly applied for the purpose of determining payroll costs and the manner of calculation of the dues measured thereby. The determinations of the Board of Directors in respect to all of the matters specified in this Section shall be final and conclusive.

*Membership Approval*

Section 3. The foregoing provisions of this Article XIII and the rules fixed thereby governing dues and assessments may be changed and other and different rules governing dues and assessments may be established by resolution of the Board but only after approval thereof by vote of members holding a majority of the voting power of the entire membership [39] at a regular or special meeting of the members, in the notice of which the substance of the resolu-

*Exhibit 3*

tion of the Board of Directors to be approved shall have been stated.

*Minimum Dues and Assessments*

Section 4. Three Hundred Dollars (\$300.00) per year is hereby fixed as the minimum dues and assessments of each member for each fiscal year ending June 30. On June 30 of each year each member which shall have paid as dues and assessments for the preceding full fiscal year of membership less than Three Hundred Dollars (\$300.00) shall pay theretofore the difference between Three Hundred Dollars (\$300.00) and the total dues and assessments paid by such member for such year.

*Notice*

Section 5. Notice of any action taken by the Board of Directors with respect to dues or assessments shall be sent to the members promptly by registered mail and shall not become effective until seven (7) days after such mailing. No member who resigns from the corporation prior to the effective date of such action shall be bound thereby.

*Separate Accounts*

Section 6. The corporation shall maintain on its books separate accounts as follows:

*Cargo Dues Account*

(a) An account consisting of all sums derived by the corporation from cargo [40] dues, and which account shall be used only for the expenses of the corporation in connection with or relating to the negotiation, execution, administration and performance of contracts affecting shore labor and other matters affecting the interests of members in connection with shore labor, and a fair and reasonable percentage of overhead and general administrative and miscel-



*Exhibit 3*

laneous expense incurred for the benefit of the membership of the corporation as a whole.

*Shipping Dues Account*

(b) An account consisting of all sums derived by the corporation from shipping dues, which account shall be used only for the expenses of the corporation in connection with or relating to negotiation, execution, administration and performance of contracts affecting seafaring labor, and other matters affecting the interest of members in connection with seafaring labor, and a fair and reasonable percentage of overhead and general administration expense incurred for the benefit of the membership of the corporation as a whole, provided that in no event will shipping dues be assessed against or collected from the foreign line members.

*Port Area Payroll Dues Accounts*

[41] (c) A separate account for each Port Area, consisting in each case of all sums derived by the corporation from payroll dues assessed in such Area, each of which accounts shall be used only for the expenses of the corporation in connection with the furnishing of services to members of a strictly local character (other than services in negotiating and administering collective bargaining contracts), such as maintenance of a central pay office, collective tax reporting, and other services for the benefit of the direct employers of shore labor within the Port Area, and a fair and reasonable percentage of administrative expense attributable to the services described in this subsection.

ARTICLE XIV.

*Admission To Membership*

No firm, person, association or corporation shall become a member of this corporation, unless and until it shall have

*Exhibit 3*

been approved for such membership by a vote of not less than a majority of the Board of Directors and unless the applicants shall be qualified for membership in accordance with the provisions of the Articles of Incorporation of this corporation and of these By-Laws.

**ARTICLE XV.***Resignation*

Any member may resign by submitting [42] its written resignation at any meeting of the Board of Directors or of the members, or by mailing or telegraphing its resignation to the corporation; and thereupon such resignation, without the necessity of any acceptance, shall become effective forthwith unless otherwise specified therein, provided, however, that no such resignation shall become effective until full payment of all arrears for dues and assessments to which such member has become liable. In the event that any member shall resign from membership in this corporation or shall be expelled from membership therein, all interest of such member in this corporation or in any of its property shall forthwith cease and terminate, provided, however, that no such resignation or expulsion and no suspension from membership in this corporation shall terminate or affect any liability of such member which may have theretofore accrued nor affect any obligation of such member under or pursuant to the terms of any labor contract or agreement theretofore made or entered into on its behalf by this corporation. The Board of Directors shall likewise have power to impose any penalties or other conditions to the re-admission of any such former member to membership in this corporation, or [43] to the termination of any suspension of any member.

*Exhibit 3*

ARTICLE XVI.

*Final Distribution of Assets*

Upon the dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets, if any, shall be divided among the members, as follows: All sums remaining in the funds derived respectively from cargo dues, shipping dues and area payroll assessments shall be distributed to each member contributing thereto in the proportion which its contributions to the respective funds during the preceding calendar year shall bear to the total amounts paid by all members contributing thereto in such year, and all other assets shall be distributed to each member in proportion to the total amount of dues and assessments assessed upon and paid by such member to the corporation during the preceding calendar year shall bear to the total amount of such dues and assessments assessed upon and paid by all members during the same year.

ARTICLE XVII.

*Amendments*

These By-Laws may be amended at any regular or special meeting of the [44] members in the notice of which the substance of the proposed amendment has been stated, by the vote of members holding two-thirds of the voting power of the entire membership.

411a

**Exhibit 4**

**PACIFIC COAST LONGSHORE AGREEMENT**

**June 16, 1961-July 1, 1966**

**INTERNATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION**

*And*

**PACIFIC MARITIME ASSOCIATION**

**[1] PACIFIC COAST LONGSHORE AGREEMENT**

THIS AGREEMENT, dated June 16, 1961 and amended June 22, 1962, is by and between Pacific Maritime Association (hereinafter called "the Association"), on behalf of its members (hereinafter designated as "the Employers" or the "individual employer"), and the International Longshoremen's and Warehousemen's Union (hereinafter designated as "the Union"), on behalf of itself and each and all of its longshore locals in California, Oregon and Washington (hereinafter designated as "longshore locals") and all employees performing work under the scope, terms and conditions of this Agreement.

The parties hereto are the International of the International Longshoremen's and Warehousemen's Union and the coastwide Pacific Maritime Association. All property rights in and to the Pacific Coast Longshore Agreement are entirely and exclusively vested in the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union respectively, and their respective members. In the case of the International Longshoremen's and Warehousemen's Union, a majority of the members of both the individual and combined locals covered by this Agreement shall be necessary to designate any successor

*Exhibit 4*

organization holding property rights and all benefits of this Agreement, and if an election is necessary to determine a majority of both individual and combined locals in order to establish the possessors of all rights and benefits under this [2] Agreement, such election shall be conducted under the auspices and the supervision of the Coast Arbitrator provided for in Section 17, provided that such designation or election is not in conflict with any paramount authority or lawful or statutory requirements.

SECTION 1

SCOPE OF THIS AGREEMENT AND ASSIGNMENT OF  
WORK TO LONGSHOREMEN

1.1 All movement of cargo on vessels of any type or on docks or to and from railroad cars and barges at docks shall be covered by this Agreement and all labor involved therein is assigned to longshoremen with the exceptions and enlargements set forth in this Section 1.

1.11 This Agreement covers the movement of outbound cargo only from the time it enters a dock and comes under the control of any terminal, stevedore, agent or vessel operator covered by this Agreement and covers movement of inbound cargo only so long as it is at a dock and under the control of any vessel operator, agent, stevedore, or terminal covered by this Agreement.

1.2 Dock work provisions.

1.21 The Employers are not required to perform the following dock work, or any parts thereof:

(a) High piling cargo and breaking down high piles of cargo,



413a

*Exhibit 4*

(b) Sorting of cargo,

[3] (c) Movement of cargo on the dock or to another dock,

(d) The removing of cargo from cargo boards,

(e) Building any loads of cargo on the dock,

(f) Multiple handling of cargo.

However, when an employer chooses to perform any such dock work, it is work covered by this Agreement and is assigned to longshoremen. Carriage of cargo between docks by barge or rail or by trucks on public roads is not longshore work.

1.22 Cargo received on pallet, lift, or cargo boards, or as unitized or packaged loads shall not be rehandled before moving to ships' tackle, unless so directed by the employer.

1.23 Any load of cargo discharged from a vessel may be dock stored just as it left the hatch.

1.24 Any standard maximum load of cargo, as defined in Section 14, discharged from a vessel may be rearranged if necessary in order to be doubled up or high piled. Such cargo shall not be considered high piled unless stored more than two loads high.

1.25 Cargo may be removed by the consignee or his agent, without additional handling by longshoremen except for breaking down high piles and any other work as the employer may choose to have done under 1.21.

1.26 If jurisdictional difficulties arise in connection with the performance of dock work, whatever jurisdictional agreements are reached shall not result in multiple handling.

[4] 1.27 Provisions relating to sorting or subsorting cargo to marks shall not prohibit a drayman from taking

*Exhibit 4*

or rearranging such already sorted cargo for the purpose of properly loading his truck.

1.28 Masonite, hardboard and similar commodities are not high piled if the commodity is dock stored for delivery to a truck in piles not to exceed approximately six (6) feet in height.

1.3 Any class of seamen in the employ of a vessel operator may do the work herein assigned to longshoremen that such seamen in their class now do, or may do, by practice arrived at by mutual consent of the parties or the Joint Coast Labor Relations Committee.

1.4 The Union may at any time, in general or limited terms, waive in writing the right of longshoremen to do any portion of the work herein assigned to longshoremen or so accept an interpretation of such assignment, and to the extent and for the time that such waiver or interpretation is accepted by the Association in writing the employer may assign or permit assignment of excepted work to any other class of workers consistent with such waiver or interpretation. Among the waivers and interpretations that have been made and accepted are:

1.41 The Employers have the right to have trucks come under the hook to move heavy lifts, dunnage, lining material, long steel, booms, and ship-repair parts directly from truck to ship and/or ship to truck.

[5] 1.42 Longshoremen will load or discharge trucks operating in direct transfer to or from the ship and otherwise will work on trucks when directed to do so by the employer and no objection thereto is raised by the truck driver or his union.

1.43 Teamsters may unload their trucks, by unit lifts or piece by piece, to the area designated by the employer at

*Exhibit 4*

which point the trucking or drayage company or shipper releases control of the cargo.

1.44 Teamsters may load their trucks piece by piece from cargo boards or with unit lifts and build loads and otherwise handle cargo on their trucks or tailgates and on loading platforms and aprons.

1.45 The Employers are free to handle cargo at industrial docks in accordance with industrial dock practices used in the past.

1.46 Where a nonmember of the Association has control over the cargo at its premises or on its vessel, such nonmember's regular employees may perform work assigned to longshoremen herein while such cargo is out of the control of any member.

1.5 All machinery, equipment and other tools now or hereafter used in moving cargo shall be operated by longshoremen when used in an operation covered by this Agreement and the operation thereof is assigned to longshoremen and is covered by this Agreement, provided that exceptions thereto—as to individual nonlongshoremen or classes of workers who are not longshoremen and as to tools or classes of tools—may be continued and any exceptions may [6] be set up, modified or eliminated by joint agreement of the Association and the Union.

1.51 The individual employer shall not be deemed to be in violation of the terms of the Agreement assigning work to longshoremen if he assigns work to a nonlongshoreman on a basis of a good-faith contention that this is permitted under an exception provided for herein.

1.52 Should there be any dispute as to the existence or terms of any exception, or should there be no reasonable

*Exhibit 4*

way to perform the work without the use of nonlongshoremen, work shall continue as directed by the employer while the dispute is resolved hereunder.

1.53 Any such dispute shall be immediately placed before the Joint Coast Labor Relations Committee by the party attacking any claimed exception or proposing any change in an exception or any new exception. The Joint Coast Labor Relations Committee decision shall be promptly issued and shall be final unless and until changed by the parties or that Committee. The Committee may act on the grounds set forth in 1.54 or on any other grounds. Both parties agree that its position on such a dispute shall in no case be supported by, or give rise to threat, restraint or coercion.

1.54 Any such dispute that is not so resolved by the Committee within seven (7) days after being placed before it, may be placed before the Coast Arbitrator on motion of either party. The Arbitrator shall decide whether an exception should be upheld [7] and may do so on the following grounds only:

(a) Nonlongshoremen were assigned the skilled or unskilled labor in dispute under practices existing as of January-August 10, 1959, arrived at by mutual consent and as thereafter modified or defined by the parties or the Joint Coast Labor Relations Committee; or

(b) The individual nonlongshoreman involved has been dependent on longshore work of the nature involved in the dispute so that the equities in favor of his continuing to make his livelihood in the performance of longshore work outweigh the equities in favor of having this work done by longshoremen; or

*Exhibit 4*

(c) There are available no longshoremen or too few longshoremen fully skilled in the operation of the tool in the port involved and there are available in the port (or in the larger area in which skilled longshoremen are not available) nonlongshoremen having high skill in the operation of the tool; or

(d) There is a shortage of longshoremen in the port or area; or

(e) Tools are not available on a bare boat basis and reasonable bona fide efforts to obtain them have been made and there is no reasonable substitute tool available.

1.6 This Agreement shall apply to cleaning cargo holds, loading ship's stores, handling lines, marking lumber, hauling ship, lashing, etc. Existing practices under which other workers perform such work [8] may be continued at the option of the Association.

1.7 Definitions.

1.71 The term "longshoreman" as used herein shall mean any man working under this Agreement.

1.72 The term "dock" as used herein shall mean any moorage—anchorage, pier, wharf, berth, terminal, waterfront structure, dolphin, dock, etc.—at which cargo is loaded to or discharged from ocean going vessels or received or delivered by an employer covered by this Agreement. The term "dock" does not include any facility at which vessels do not moor.

1.8 An employer in a port covered by this Agreement who joins the Association subsequent to the execution hereof and who is not a party to any conflicting longshore agreement becomes subject to this Agreement.



*Exhibit 4*

1.9 When work that is within the scope of this Agreement is assigned pursuant hereto to nonlongshoremen, the terms and provisions of this Agreement need not apply to such work.

\* \* \*

[14] SECTION 3

GUARANTEES

3.1 Eight-hour guarantee.

3.11 Applicability and method of payment.

3.111 Fully registered and limited register men who are ordered to a job and who report to work and are turned to shall receive a guarantee of eight (8) hours' work or eight (8) hours' pay, except on the third shift where a guarantee of five (5) hours of work or five (5) hours' pay is applicable.

3.112 On the day shift, the eight-hour guarantee of work or pay shall be provided between the hours of 8:00 a.m. and 6:00 p.m.

3.113 On the second shift, the eight-hour guarantee of work or pay shall be provided within a spread of nine (9) hours from the normal starting time, or in the San Francisco Bay Area from the beginning of a late subsequent start permitted under the present provisions in the San Francisco working rules. The spread is enlarged by one (1) hour for a late initial start.

3.114 In the event eight (8) hours of work cannot be provided and dead time results, such time on the day shift from Monday through Friday shall [15] be paid for at the straight time rate of pay. Dead time shall not be charged against the six-hour day. On the second shift, week ends and holidays, dead time shall be paid for at the overtime

*Exhibit 4*

rate of pay of 1.5 times the straight time rate. No penalty cargo rates shall be paid for dead time hours.

3.115 A man shall have only one eight-hour guarantee in any one day (See 3.28).

3.12 Exceptions to eight-hour guarantee.

3.121 The eight hour guarantee shall not apply in the following circumstances:

3.1211 When men are neither turned to nor ordered to stand by (See 3.22);

3.1212 When men are turned to or ordered to stand by and work cannot commence, continue or resume because of bad weather (such determination to be made by the employer) and the men are not ordered back after a midshift meal (See 3.23);

3.1213 When extra longshoremen from the skilled classifications are ordered and turned to on an operation of short duration and are not shifted thereafter to comparable work on other docks or ships and are not ordered back after a midshift meal (See 3.24);

3.1214 When men employed at Selby, California, are not shifted to other operations to fill out the eight-hour guarantee (See 3.27); and

3.1215 As provided in 3.4.

3.122 Where men have been ordered and fail to report to work at all or on time, thus delaying [16] the start of an operation, the time lost thereby until replacements have been provided or until the man or gang has been turned to shall be deducted from the eight-hour guarantee.

3.123 When gangs are traveled and, as a result, their starting time is later than 9:00 a.m. so that it is impossible to fill out the eight-hour guarantee between 8:00 a.m. and

*Exhibit 4*

6:00 p.m., the guarantee shall be pay or work from actual starting time until 6:00 p.m., except for the meal hour. The same principle shall apply to a night shift start.

3.124 When hours are lost as a result of stop-work meetings, or mutual agreement of the ILWU and PMA, such hours shall be deducted from the eight-hour guarantee.

3.125 In those ports where a 4:00 p.m. or 5:00 p.m. stop is provided by rule for specific days, the guarantee on such days shall be from the starting time, which for payroll purposes can be no later than 9:00 a.m., to such 4:00 p.m. or 5:00 p.m. stop.

3.126 When men are employed at Selby, California, the employer may shift the men to other operations to fill out an eight-hour guarantee, otherwise the guarantee is only four (4) hours. If men are not shifted to other work but are ordered back after a midshift meal, a second four-hour minimum shall apply.

3.13 Accompanying the obligation placed upon the Employers to furnish eight (8) hours of work each shift is the obligation on the part of the men to shift from one job to another for the purpose of [17] working a full shift when such move is ordered by the Employers. Subject to the provisions hereunder the Employers have the right to shift men and gangs in order to fill out the work guarantee. Men and gangs shall shift as ordered.

3.131 To fill out his eight-hour work guarantee, a skill rated longshoreman may be shifted only to skill rated work suitable to his qualifications.

3.132 Employers may shift men in ship gangs to any other work including all dock and car work in order to fill out the work guarantee.

3.133 Dockmen shall not be shifted to work aboard ships to get the eight-hour guarantee but may be shifted to any work on docks, cars or barges.

*Exhibit 4*

3.1331 Dockmen will be released when there is no further work for them or on normal "knock off" day (as provided by local working rules) on a dock, whichever comes first.

3.1332 Dock gangs and/or men assigned to work against a ship will be released at the end of the shift when their work for that vessel is completed. After the ship sails, the employer may retain dockmen (against that ship) as required to handle that ship's cargo on the dock even though the ship gangs have been released.

3.1333 Dock gangs and/or men assigned to work on a dock will do any dock work. These men can be moved anywhere at any time on the dock and can be shifted temporarily to work against a ship or to another dock in order to fill out or fulfill their guarantee and then shifted back to their usual dock [18] work. These men can also be shifted to work against a ship when the dock units assigned to a ship are not complete.

3.1334 Dock units and/or men who are assigned to work against a ship can be moved anywhere to work against the ship and may be shifted or transferred as follows:

3.13341 To any other dock work when there is no work against the ship at the beginning of the shift or during the course of the shift, to be returned to work against the ship when such work becomes available.

3.13342 To any other dock work to fill out the eight-hour guarantee.

3.13343 To another ship for a late start; or to another ship which is going to shift or sail; or in other situations to avoid other eight-hour guarantees.

3.13344 When the ship gang is working and the dockmen are not required. This clause will be interpreted to

*Exhibit 4*

mean that men will not be transferred away for unreasonably short periods.

3.13345 If the ship gang is shifted to another vessel or to do dock work.

3.13346 If the ship gang is working a high line operation or from a barge or other cargo handling that does not require any or all of the dockmen.

3.13347 When dockmen are shifted from the first ship and further work will take place on that ship, the men may be transferred to other [19] work in accordance with 3.13341 to 3.13346 inclusive above, and unless peeled off shall be ordered back to the first ship either during the same shift or the next day. If there is no further work against the first ship, such men shall be released at the end of the shift.

3.13348 Dock units or dockmen do not have gear priority. Dock units or dockmen may be peeled off in the same manner as ship gangs and the remaining dock units or men may be used against all gears.

3.134 The employer shall order swingmen (ship or dockmen) when such men are necessary. These swingmen shall be ordered for the shift when it is reasonably anticipated that they will be used in the hold and may be used for any dock work and/or for hold work in any hatch.

3.135 Employers may shift men from shovel and freezer work to any other work including all dock and car work in order to fill out a shift. When so shifted, the penalty cargo rate shall not prevail. The employer may not shift men dispatched for general cargo to shovel or freezer work.

3.136 The employer shall have the right to peel off gangs at any time during a shift or at the end of a shift. The remaining gangs can work at all gears.



*Exhibit 4*

3.1361. The Employers have the right to order back after any shift only such gangs as are needed to finish the remaining work. Such gang or gangs ordered back must be the gang or gangs which [20] the employer believes in good faith have the most work to do at their gear. They may be required to finish the work at the gear of the released gangs. Under such circumstances the gear priority of the gangs released is suspended. Any gang peeled off under this rule cannot be replaced at its gear by a new gang from the dispatching hall until the second subsequent comparable shift.

3.1362 Gangs ordered to work under conditions which such gangs contend violate gear priority rules shall work as directed and claim(s) for such violation shall be presented by the Union. If it is established that a gear priority violation did occur, then it will be automatic that the amount of time another gang worked in the hatch in which the gear priority violation was claimed will be paid the gang whose gear priority was violated on an hour for hour basis, unless the employer on whose ship the alleged gear priority violation occurred maintains that such incident happened for reasons beyond the employer's control. The employer may then take that position and process it through the grievance procedure to the Area Arbitrator for final decision.

3.137 The shifting of registered and limited registered men to fulfill the guarantee shall be carried out without bumping.

3.138 Any gear priority rule will not prevent the shifting of men and gangs for the purpose of fulfilling the eight-hour guarantee.

3.139 "Center line" and "imaginary bulkhead" and similar practices which result in arbitrary [21] division of work among gangs shall be eliminated.

*Exhibit 4*

3.14 Rules and examples applicable to shifting men or gangs:

3.141 Initial late start orders may be placed at the dispatching hall to work a ship and to shift to a second ship for a late start on the second ship. Men so ordered shall be dispatched for the second ship, with orders to work the first ship only as a fill-in.

3.142 Men or gangs may be ordered to shift from a job or a ship that they have completed to a late start on another job or ship. Such men or gangs will be released at the end of the shift on the second job and may be required to work no longer than the extended hours as provided in Section 2.

3.143 Men or gangs may be ordered to shift from a job or a ship where they have not completed their original assignment or permit a late start on another job or ship, or in order to fill out the eight-hour work guarantee, or in order to finish the second ship for shifting or sailing. These men or gangs will be ordered back to their original job during that shift or for the start of the next day's shift. If extended hours are required to permit the second ship to shift or sail, the men or gangs will work up to but not beyond the end of the extension provided in Section 2.

3.144 Men or gangs may be ordered to shift from a job or a ship which they have not completed but where they have run out of available work—e.g. a delay in arrival of cargo, a breakdown of [22] equipment, a ship that fails to arrive as scheduled, etc.—to another job or ship in order to complete the eight-hour guarantee, and they will be ordered to return to their original job to finish it.

3.145 Shifting of men or gangs under 3.13 or 3.14 may be accomplished without clearance through the dispatching hall.

*Exhibit 4*

3.146 Gangs will have gear priority on only one ship during a shift and will be released to the dispatching hall at the end of any shift in which they have completed their work on the ship on which they had priority.

3.15 Possible adjustments in small ports:

3.151 The full provisions of the eight-hour guarantee shall prevail in all ports. In ports of six gangs or less adjustments may be made in leeway for late starts because no alternative work is available to fill out the eight-hour guarantee by mutual agreement at the local level provided there is approval by the Joint Coast Labor Relations Committee.

3.2 Four-hour minimum.

3.21 Longshoremen, other than fully registered or limited registered men, who are ordered to a job and are turned to shall receive a minimum of four (4) hours' work or four (4) hours' pay.

3.22 Men who are ordered, report for work and are neither turned to nor ordered to stand by shall receive the four-hour minimum, except where inability to turn to is a result of insufficient men to start the operation. Present port rules defining the number of men to start operations shall apply.

[23] 3.221 When an operation cannot commence at the designated starting time because of failure of at least the minimum required and properly ordered number of men to appear, then pay shall be as follows:

3.2211 Units not filled to minimum complement as provided in local working rules shall receive no pay unless they receive and accept an order to stand by awaiting additional men as needed to complete the minimum complement of men. Such standby shall, if accepted, be paid for and limited to one hour.

*Exhibit 4*

3.2212 Other units or men directly related to the operation who report for work as ordered shall be turned to. They may be released one hour later if the balance of the work does not commence or continue thereafter because of insufficient men being present. If they are so released they shall receive a four-hour minimum in addition to the time they may have worked prior to the commencement of the shift.

3.2213 Where possible, units of less than the minimum requirements of men shall be consolidated to provide proper complements and the men shall so combine or shift as provided by this Agreement.

3.222 When the required minimum number of men report and turn to as directed and work continues up to the midshift meal hour and there are men who as yet have not reported, then either the men or the employer can determine that work cannot [24] continue thereafter. When work ceases under these circumstances or if the employer determines that the operation is not satisfactory prior to the meal hour then the minimum pay for all related men or units shall be time worked or four (4) hours, whichever is the greater.

3.223 When the required minimum complement reports and the operation commences and cannot be continued because of refusal of men to continue working with less than the required number of men, then pay shall be as follows:

3.2231 Such men or units of men refusing to continue work shall be paid on the basis of time worked.

3.2232 Related men or units of men shall be shifted to other work, or shall be released with a four-hour minimum.

3.2233 Such a refusal to continue work shall not be considered a violation of this Agreement.



*Exhibit 4*

3.23 When men are turned to or ordered to stand by and work cannot commence or continue because of bad weather (such determination to be made by the employer), the four-hour minimum shall apply unless the men are ordered back after a midshift meal. Any dead time resulting from bad weather shall be paid under 3.114.

3.24 When an operation of short duration requires extra longshoremen from the skilled classifications and such men are ordered and turned to, they shall have a four-hour minimum, and can be transferred [25] to comparable work on the original dock or ship to fill out the four-hour minimum.

3.25 When a gang quits during the course of the eight (8) hours of work or quits by refusal to work the extensions for shifting or sailing and a replacement gang is ordered from the dispatching hall then the replacement gang shall have a four-hour minimum guarantee for that shift.

3.26 Any replacements ordered or accepted by the employer is to be paid for time worked, or the four-hour minimum, whichever is greater, on his initial shift.

3.27 When men are employed at Selby, California, they have a four-hour guarantee. If the employer shifts the men to other operations or orders them back after a midshift meal then the eight-hour guarantee shall apply.

3.28 A man who has received an eight-hour guarantee and has been dispatched from the hall to a new job shall receive an additional four-hour guarantee for the second job. Overtime is payable only after six (6) hours of straight time work on both jobs.

3.3 Three-hour guarantee.

3.31 When men are ordered back after supper they shall be paid a minimum of three (3) hours.



*Exhibit 4*

3.4 General provisions as to guarantees.

3.41 There shall be no guarantee for any man who is released for cause or who quits or who refuses to shift as provided under 3.13 or who loses [26] hours as a result of ILWU unilateral action or who is not turned to where inability to turn to is a result of insufficient men to start the operation or who is turned to and works less than his guaranteed time by reason of illness or injury. Such men shall be paid only for their actual working time.

3.42 When men are late in reporting at the designated shift starting time on an initial or subsequent start, if they are turned to, they shall then be turned to at and paid as of the next quarter-hour; that is, the quarter-hour, the half-hour, the three-quarter-hour or the even hour, and time lost between the designated starting time and time turned to shall be deducted from the guarantee.

3.43 When men are not sent to eat before the beginning of the second hour of the two-hour meal period, pay for the work in the second hour shall be one-half hour if worked less than one-half of such hour and one full hour if worked one-half or more than one-half of such hour.

3.44 When men are knocked off work six (6) minutes or more after the even hour, they shall be paid to the next one-half hour and when knocked off thirty-six (36) minutes or more past the even hour, they shall be paid to the end of the hour.

3.45 The guarantees of this Section 3 do not apply to longshore baggagemen or linesmen or to gearmen called in on an emergency.

3.451 Guarantees applicable to longshore baggagemen, linesmen and gearmen called in on an emergency may be adopted or modified by unanimous [27] action of the Joint

*Exhibit 4*

Coast Labor Relations Committee and, subject to the control of such Committee so exercised, existing and future local rules or mutually agreed practices shall be applicable.

3.46 No rule is to be used as a "subterfuge for firing gangs."

[28] SECTION 6

WAGES

6.1 Wage Rates.

6.11 The rates of pay for longshore work shall be as set forth in the Wage Rate Schedule and shall be effective as set forth therein.

6.12 The straight time rate (which may be the basic straight time rate or that rate plus applicable straight time penalty cargo rate and/or skill differential) shall be paid for work in the basic, normal or regular workday and workweek consisting of the first six (6) hours worked between 8:00 a.m. and 5:00 p.m., Monday through Friday. For work outside of such basic, normal or regular workday or workweek extra compensation in the form of premium rates shall be provided in accordance with the provisions of 6.2.

6.2 Straight and overtime rates shall be paid according to the following schedule:

6.21 Straight time rate.

6.211 First six (6) hours worked between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

6.22 Overtime rate of 1.5 times the straight time rate.

[29] 6.221 All work in excess of six (6) hours between 8:00 a.m. and 5:00 p.m.

*Exhibit 4*

6.222 All work between 5:00 p.m. and 8:00 a.m. on weekdays and all work on Saturdays, Sundays and Agreement holidays, except such work as requires a higher premium rate as provided below.

6.223 When working after 12:00 noon without release for meal—except on Saturdays, Sundays and Agreement holidays—and work continuing thereafter without an opportunity to eat.

6.23 Time and one-half the 1.5 overtime rate.

6.231 When working into the second hour of the meal period on the second shift without release for meal and work continuing thereafter without an opportunity to eat.

6.232 When working after 12:00 noon without release for meal—on Saturdays, Sundays and Agreement holidays—and work continuing thereafter without an opportunity to eat.

6.233 Work in excess of five (5) consecutive hours without an opportunity to eat when the rate then prevailing is the overtime rate.

6.234 All work in excess of eleven (11) hours in any one shift.

6.24 Overtime premium rate of 1.8 times the straight time rate.

6.241 The first five (5) hours of work during overtime hours when the man's work begins at 2:30 a.m. or 3:00 a.m.

6.25 Time and one-half the 1.8 overtime premium rate,

[30] 6.251 Work in excess of five (5) hours when the man's work begins at 2:30 a.m. or 3:00 a.m.

6.3 Skill differentials.

431a.

*Exhibit 4*

6.31 In addition to the basic wages for longshore work, additional wages to be called skill differentials shall be paid for the types of work specified below.

6.32 During overtime hours, the skill differential shall be one and one-half times the straight time differential.

## 6.33 Skill Differentials By Areas

| Skill                           | So.<br>Cal.      | No.<br>Cal. | Ore.             | Wash. |
|---------------------------------|------------------|-------------|------------------|-------|
| Blade Trucker—Aboard ship       | —                | —           | —                | .25   |
| Blade Trucker—On dock           | —                | —           | —                | .15   |
| Boom Man                        | —                | —           | .15              | .15   |
| Burton Man                      | .15              | —           | .15              | .15   |
| Bulldozer Operator <sup>3</sup> | .30              | .30         | .30              | .30   |
| Combination Lift Truck—         |                  |             |                  |       |
| Jitney Driver                   | .15              | .15         | .15              | .15   |
| Crane Chaser                    | —                | —           | .15              | —     |
| Crane Driver                    | .40              | .40         | .40              | .40   |
| Donkey Driver                   | —                | —           | .15              | .15   |
| Dragline Driver                 | .15              | .15         | .15              | .15   |
| Gang Boss                       | .40 <sup>1</sup> | .20         | .20              | —     |
|                                 |                  |             | .25 <sup>2</sup> |       |
| [31] Guy Man                    | .15              | —           | —                | —     |
| Hatch Boss Tender <sup>4</sup>  | —                | —           | —                | .25   |
| Hatch Tender                    | .15              | .15         | .15              | .15   |
| Lift Truck Operator             | .15              | .15         | .15              | .15   |
| Payload Operator <sup>3</sup>   | .15              | .15         | .15              | .15   |
| Ross Carrier Driver             | .15              | .15         | .15              | .15   |
| Sack Turner                     | —                | —           | .15              | .15   |
| Side Runner                     | —                | —           | .15              | .15   |
| Stowing Machine Driver          | —                | —           | .15              | .15   |
| Winch Driver                    | .15              | .15         | .15              | .15   |

6.34 The rate of pay for Jitney Drivers shall be the basic longshore rate. When a Jitney Driver is dispatched

<sup>1</sup> Applies to Pt. Hueneme only.

<sup>2</sup> Coos Bay, Newport and Bandon .25; other Oregon ports .20.

<sup>3</sup> Two men shall be employed for each machine in operation.

*Exhibit 4*

to drive Jitney, he may be assigned to other work to fill out his minimum guarantee. Combination Lift Truck-Jitney Drivers may be required to work both as Jitney and Lift Truck Drivers. When a Combination man, dispatched as such, is required to drive Jitney, he shall be paid the skill differential, and shall not be replaced during the job by a man working at less than the combination rate.

6.35 The parties or the Joint Coast Labor Relations Committee shall establish coastwise skill rates for operating cranes and other tools and, where appropriate, [32] for operating machinery not presently in use.<sup>1</sup>

6.4 Penalty cargo rates.

6.41 In addition to the basic wages for longshore work, additional wages to be called penalties shall be paid for the types of cargoes, conditions of cargoes, or working conditions specified in the Wage Rate Schedule.

6.42 The parties will study the entire Penalty Cargo List with the intent of revising it to eliminate commodities where packaging or mode of handling has changed so as to remove the obnoxious features, and to add new commodities where there are obnoxious features justifying a penalty and to provide the penalties applicable to crane drivers. Any disagreement reached shall be resolved by the Coast Arbitrator.

6.43 Except where otherwise specified, the penalty cargo rates shall apply to all members of the longshore gang and dockmen working the penalty cargo.

6.44 Where two penalty rates might apply, the higher penalty rate shall apply and in no case shall more than one penalty rate be paid.

---

<sup>4</sup> Applies to Tacoma and Anacortes only.

<sup>1</sup> Supplement IV will attach hereto as adopted by the Joint Coast Labor Relations Committee.



*Exhibit 4*

6.45 During overtime hours, including those hours worked in shifts beginning at 2:30 or 3:00 a.m., the penalty cargo rate shall be one and one-half times the straight time penalty cargo rate.

[33] 6.46 The straight time penalty rate for working explosives shall at all times equal the basic straight time rate.

6.47 Where skill differentials and penalties both apply, the allowance for both the skill differential and the penalty shall be added to the basic rate and shall be augmented during overtime hours as provided in this Section 6.

6.5 Subsistence.

Subsistence rates when payable shall be five dollars (\$5.00) per night for lodging and two dollars (\$2.00) per meal.

6.6 Personal effects.

Men shall be reimbursed for damage (other than usual wear and tear) to personal effects which are damaged on the job, provided satisfactory evidence is presented to the Joint Port Labor Relations Committee. The amount of the reimbursement shall be decided by the Committee, which shall adhere to the following rules:

6.61 Personal effects are items which a man needs to take on the job to perform his work, and there must be proven need for the item on the job.

6.62 Any damage must be a direct result of performing work and must be reported to company supervision on the job when it occurs.

6.63 The damaged item must be exhibited to the Committee for determination of the depreciation and extent of damage.

(Exh. 4, 33-34, 42-43)

434a

*Exhibit 4*

6.64 The claim must be accompanied by prima [34] facie evidence that the item was damaged on the job, and negligence and carelessness are factors to be given consideration.

6.65 If reimbursement is in order, the item will either be repaired or replaced in kind or reimbursed at its depreciated value.

6.66 Any second approved claim, by an individual, for broken glasses, may be reimbursed by replacement with safety-type glasses.

6.67 Claims for lost or stolen items are not valid.

• • •

[42] SECTION 8

HIRING, DISPATCHING, REGISTRATION AND PREFERENCE

8.1 Dispatching halls.

8.11 The hiring and dispatching of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association in accordance with the provisions of Section 17. There shall be one central dispatching hall in each of the ports with such branch halls as shall be mutually agreed upon. All expense of the dispatching halls shall be borne one-half by the local union and one-half by the Employers.

8.12 Any longshoreman who is not a member of the Union shall be permitted to use the dispatching [43] hall only if he pays his pro rata share of the expenses related to the dispatching hall, the Labor Relations Committee, etc. The amount of these payments and the manner of paying them shall be fixed by the Joint Port Labor Relations Committees.

*Exhibit 4*

8.13 Any non-Association employer shall be permitted to use the dispatching hall only if he pays to the Association for the support of the hall the equivalent of the dues and assessments paid by the Association's members. Such non-member employers shall have no preference in the allocation of men, and shall be allocated men on the same basis as Association members.

8.14 Longshoremen not on the registered list shall not be dispatched from the dispatching hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.

8.2 Dispatching hall personnel.

8.21 The personnel for each dispatching hall, with the exception of Dispatchers, shall be determined and appointed by the Joint Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Joint Labor Relations Committee of the port. If it fails to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided in accord with provisions of Section 17.

[44] 8.22 The term of office of any Dispatcher shall be at least one year.

8.23 All personnel of the dispatching hall, including Dispatchers, shall be governed by rules and regulations of the Joint Port Labor Relations Committee, and shall be removable for cause by the Joint Port Labor Relations Committee.

8.24 The Association shall be permitted to maintain a representative in the dispatching hall. The Joint Port Labor Relations Committee shall permit any authorized representative of the Association or the Union to inspect dispatching hall records.

*Exhibit 4*

**8.3 Registration.**

8.31 The Joint Port Labor Relations Committee in any port, subject to the ultimate control of the Joint Coast Labor Relations Committee, shall exercise control over registered lists in that port, including the power to make additions to or subtractions from the registered lists as may be necessary. In each port there shall be maintained a list of longshoremen showing their registration status under this Agreement. When objecting to the registration of any man, members of the Joint Port Labor Relations Committee shall be required to give reason therefor.

8.32 Any longshoreman registered by a Joint Port Labor Relations Committee in accordance with this Agreement shall thereby acquire joint coastwide registration under the Pacific Coast Longshore Agreement and the Master Agreement for Clerks, [45] Checkers, and Related Classifications. The rights and obligations of coastwide registration in regard to transfers between ports, visiting, and leaves of absence are set forth in Supplement I to this Agreement. The rights and obligations of coastwide registration in regard to transfer of registered longshoremen to registered clerk status and vice versa are set forth in Supplement II to this Agreement.

8.33 Either party may demand additions to or subtractions from the registered lists as may be necessary to meet the needs of the industry.

8.34 Each registered longshoreman has the obligation to request a leave of absence if he intends to absent himself from work for a period of thirty (30) days or longer and in other circumstances as may be covered by port rules under Supplement I. A registered longshoreman who fails to work for thirty (30) days, except when on approved leave, and whose facts and reasons for such absence are

*Exhibit 4*

not acceptable to the Joint Port Labor Relations Committee, may be de-registered.

8.4 Preference of employment.

8.41 First preference of employment and dispatch shall be given to fully registered longshoremen who are available for employment covered by Section 1 of this Agreement in accordance with the rules and regulations adopted by the Joint Port Labor Relations Committee. A similar second preference shall be so given to limited registered men. The Joint Coast Labor Relations Committee shall be authorized to effectuate such preferences in such [46] manner and for such times and places as it determines in its discretion.

8.42 Dispatching of men and gangs shall be under the principle of low-man, low-gang, first-to-be-dispatched, except where local dispatching rules provide otherwise for dispatching of special skilled men and gangs.

8.43 There shall be no favoritism or discrimination in the hiring or dispatching or employment of any longshoreman qualified and eligible under the Agreement.

8.44 Any longshoreman or dispatching hall employee found guilty by the Joint Port Labor Relations Committee of favoritism or discrimination or bribery shall immediately be discharged and dropped from the registered list.

[47] SECTION 10

ORGANIZATION OF GANGS; GANG SIZES AND MANNING,  
AND METHODS OF DISPATCHING

10.1 The Joint Port Labor Relations Committee shall determine the methods of dispatching for the port. Gangs and men shall be dispatched only as ordered by the em-



*Exhibit 4.*

ployer. The Employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to the provisions of this Agreement, gangs and men not assigned to gangs shall be so dispatched as to equalize their work opportunities as nearly as practicable, having regard to their qualifications for the work they are required to do. The [48] Employers shall be free to select their men within those eligible under the policies jointly determined and the men likewise shall be free to select their jobs.

10.11 The employer shall have until 2:00 p.m. to file orders or cancel orders for gangs for the second and third shifts.

10.2 The organized or make-up minimum basic ship gang for general break bulk cargo (hereinafter called the "basic gang") shall consist of men as follows:

A gang boss (in ports where such are used)

A winch driver (two on single winches)

A hatch tender

Two (2) sling or front men

Four (4) holdmen (including any side runners used).

10.21 Except as hereinafter provided:

10.211 On loading operations: when the loads are being landed in the vessel at their place of rest, the basic gang can be used; when the loads are being stowed by mechanical equipment after landing, the basic gang shall be supplemented by the necessary driver(s).

10.212 On discharge operations, this basic gang can be used when the loads are being moved to the point of removal from the vessel by mechanical equipment plus

*Exhibit 4*

driver(s) or are ready for slinging without additional work except the placement of slings or similar devices.

10.22 When the cargo handling operation to [49] be performed requires only a basic gang, that gang may be used to rig, uncover and cover hatches without additional men.

10.23 When cargo is to be hand-handled, then two swingmen shall be used with the basic gang for all discharge operations, and four swingmen shall be used for all loading operations. Exception: When space and safety are the factors that dictate that only one load can be handled at a time, prior to the handling of the second load, then the basic gang can perform such handling provided it is to last for one hour or more.

10.24 Such swingmen as are called for herein may be used for any dock work and/or for hold work in any hatch and may be shifted as provided in 3.132 and the second winch driver may be shifted as provided in 3.131. Swingmen, skilled or unskilled, and the second winch driver, shall not be added to the basic gang complements in order to have ship's time guaranteed. They shall have the eight-hour guarantee and the right to call-backs without favoritism. They may be released at the end of any shift when they are not needed to start the next shift.

10.25 Longshore work such as rigging, laying dunnage, etc. in connection with loading and discharging is to be performed as ordered.

10.26 The employer shall be permitted to bring machinery and machine drivers into the hold and to swing out an equivalent number of holdmen, provided four basic holdmen are retained at all times.

10.27 The minimums set forth can be supplemented [50] in any numbers as ordered by the employer, while needed, without precedent.

*Exhibit 4*

10.28 If loads above contractual limits are to be moved manually, and additional men or machines are required to guarantee against onerous individual workload; and to maintain safety standards, they will be provided.

10.3 Manning for existing operations shall continue with the employer having the right to ask for review of such manning through the contract machinery in the following situations:

(a) Where existing manning for other general cargo operations, including packaged lumber and mixed operations of break bulk and unitized cargo (other than hand-handled operations), exceed the basic gang; provided, however, that such review shall not seek to reduce the manning below said basic gang, and shall be based on a determination of necessary men as defined in 15.2.

(b) For remaining existing operations, such review shall be based on a determination of necessary men as defined in 15.2 and shall not be limited by the basic gang structure.

10.31 In existing operations, where changed methods having already been introduced which eliminate hand-handling of cargo on a piece by piece basis; or which eliminate hand-handling of units (as in cases of straight runs of unitized cargo, mechanically landed, lifted and stowed and vice versa); or which eliminate the need for holdmen by removal [51] of devices (as in the case of chutes in scrap operation), the procedure of 10.3(b) shall apply.

10.4 When new methods of operation are introduced, the Employers shall discuss the proposed manning with the Union. If agreement cannot be reached at the coast level, the Employers shall have the right to put their manning in effect, subject to final resolution through the Agreement grievance machinery.

*Exhibit 4*

10.5 The use of dock gang units shall continue with flexibility in their usage. A dock gang need not be released as a unit.

10.6 If, during a shift, a change is made from a discharge to a loading operation, and the change requires additional men under the provisions of this Section 10, if the employer is unable to swing in men from ship or dock from his own employees, the holdmen will work without additional men for a maximum of fifteen (15) loads but not more than one hour.

10.7 The safeguards of 15.1 shall apply to gang size and manning.

• • •

[55] SECTION 14

SLING LOAD LIMITS

14.1 Where conditions; number of longshoremen on the dock and in the ship, and the method of operation are the same as in 1937, loads for commodities covered herein built by a longshoreman shall be of such size as the employer shall direct within the maximum limits herein specified, and no employer shall direct and longshoremen shall not be required to build loads covered by this 14.1 in excess of the following standard maximum sling loads:

| Commodity  | Sling Load |
|--|------------|
| (1)-Canned Goods   |            |
| 24-2½ talls, 6-12's tall and 48-1 talls (including salmon) ..... | 35 cases   |
| When loads are built of 3 tiers of 12 .....                      | 36 cases   |
| 24-1 talls .....   | 60 cases   |
| 24-2's talls .....   | 50 cases   |
| 6-10's talls .....   | 40 cases   |
| Miscellaneous cans and jars—                                     |            |
| Maximum 2100 lbs.  |            |

*Exhibit 4*

## (2)-Dried Fruits and Raisins

## (Gross Weight)

|                    |          |
|--------------------|----------|
| 22 to 31 lbs. .... | 72 cases |
| 32 to 39 lbs. .... | 60 cases |
| 40 to 50 lbs. .... | 40 cases |
| 24-2 lbs. ....     | 35 cases |
| 48-16 oz. ....     | 40 cases |

## (3)-Fresh Fruits-Standard Boxes

|                        |            |
|------------------------|------------|
| Oranges-Standard ..... | 27 boxes   |
| [56] Commodity .....   | Sling Load |
| Oranges-Maximum .....  | 28 boxes   |
| Apples and Pears ..... | 40 boxes   |

## (4)-Miscellaneous Products

|   |           |
|---|-----------|
| Case Oil-2-5 gal. cans (hand hauled to or from ship's tackle) ..... | 18 cases  |
| Power hauled to or from ship's tackle .....                         | 24 cases  |
| Cocoanut .....  | 12 cases  |
| Tea-Standard .....  | 12 cases  |
| Tea-Small .....   | 16 cases  |
| Copper slabs (large) .....  | 5 slabs   |
| Copper slabs (small) .....  | 6 slabs   |
| Copper (bars) .....   | 9 bars    |
| Copper (Ingots), Approximately 43 lbs per Ingot .....               | 48 ingots |
| Cotton, under standard conditions .....                             | 3 bales   |
| Rubber (1 tier on sling), maximum .....                             | 10 bales  |
| Gunnies, large .....  | 2 bales   |
| Gunnies, medium .....   | 3 bales   |
| Gunnies, small .....  | 4 bales   |
| Rags, large (above 700 lbs.) .....                                  | 2 bales   |
| Rags, medium (500 to 700 lbs.) .....                                | 3 bales   |
| Rags, small (below 500 lbs.) .....                                  | 4 bales   |



443a

*Exhibit 4*

|   |            |
|---|------------|
| Sisal, large .....  | 3 bales    |
| Hemp, ordinary .....  | 5 bales    |
| Jute, 400 lb. bales .....   | 5 bales    |
| Pulp, bales weighing 350 lbs. or more .....   | 6 bales    |
| Pulp, bales weighing 349 lbs. or less .....   | 8 bales    |
| Steel drums, containing Asphalt, Oil, etc., weighing 500 lbs. or less .....   | 4 drums    |
| (When Using Chine Hooks)  |            |
| [57] Commodity  | Sling Load |
| Steel drums, containing Asphalt, Oil, etc., weighing 500 lbs. or less on board (capacity of board-1 tier), maximum of ..... | 5 drums    |
| Barrels, wood, heavy, containing wine, lard, etc., maximum of .....   | 4 bbls.    |
| (when Using Chine Hooks)  |            |
| Barrels, wood, heavy, containing wine, lard, etc., (capacity of board-1 tier, on board maximum of .....                     | 4 bbls.    |
| Barrels, wood, containing dry milk, sugar, etc...   | 6 bbls.    |
| Newsprint, rolls .....  | 2 rolls    |
| Newsprint, rolls (when weight is 1800 lbs. or over) .....   | 1 roll     |
| (5)-Sacks   |            |
| Flour-140 lbs. ....   | 15 sacks   |
| Flour-100 lbs. ....   | 20 sacks   |
| Flour- 50 lbs. ....   | 40 sacks   |
| Flour- 50 lbs. (in balloon sling) ....  | 50 sacks   |
| Cement .....  | 22 sacks   |
| Wheat .....   | 15 sacks   |
| Barley .....  | 15 sacks   |
| Coffee-Power haul from and to ship's tackle ...   | 12 sacks   |
| Coffee-Hand pulled from and to ship's tackle (bags weighing approximately 136 lbs.) ....                                    | 9 sacks    |

*Exhibit 4*

| [58] Commodity   | Sling Load |
|--|------------|
| Coffee—Hand pulled from and to ship's tackle<br>(bags weighing 137 lbs. and over) .....  | 8 sacks    |
| Other sacks—maximum .....  | 2100 lbs.  |
| (6)—When flat trucks are pulled by hand between<br>ship's tackle and place of rest on dock load<br>not to exceed .....   | 1400 lbs.  |
| (7)—Number of loaded trailers (4 wheeler)—to be<br>hailed by jitney as follows:  |            |
| Within the limits of the ordinary berthing<br>space of the vessel .....  | 2 trailers |
| Long hauls to bulk head warehouses or to ad-<br>joining docks or berths .....  | 3 trailers |
| Extra long haul to separate docks or across<br>streets—4 trailers providing that four (4)<br>trailers shall be used only where it is now<br>the port practice. |            |
| (8)—When cargo is transported to or from the<br>point of stowage by power equipment, the<br>following loads shall apply:                                       |            |
| 48-1 talls .....   | 40         |
| 24-1 talls .....   | 60         |
| 24-2's talls .....   | 48         |
| 24-2½'s talls .....  | 40         |
| 6-10's talls .....   | 50         |
| 6-12's talls .....   | 50         |

[59] 14.11 The package described in the foregoing schedule of maximum load limits on loads covered by 14.1 are for the standard sizes by weight and measurement of 1937. If any commodities named are of a size as to weight and measurement different from that which is specified, the maximum load limit will be changed accordingly for any such commodity, by mutual agreement.

*Exhibit 4*

14.12 If cargo is being pre-palletized on the dock, the load limits herein specified do not govern.

14.13 It is agreed that the Employers will not use maximum-sized loads or minimal numbers of men as a subterfuge to establish unreasonable speed-ups; nor will the Union or its longshore local(s) resort to subterfuge to curtail production.

14.2 In the case of all commodities other than those listed in 14.1 or on operations not subject to the limitations of 14.1, where operations have changed or where new commodities or operations have developed, loads shall be built and handled as directed by the employer, within safe and practical limits and without speed up of the individual. Any dispute arising with regard to such an operation shall be settled through the grievance machinery with work continuing as ordered by the employer.

14.21 An increase in the number of longshoremen manhandling cargo or the use of machinery to move or stow cargo on the dock or on the ship shall be considered a change in operations that permits [60] the handling of loads larger than those specified in 14.1.

14.3 Loads shall be skimmed only as necessary to an operation and as ordered by the employer.

14.4 The Union shall have the right, without limitation, to raise a claim that an operation imposes an onerous workload on the individual worker and to carry such an issue through the grievance machinery as provided in accordance with Sections 11 and 17 of this Agreement.

SECTION 15

EFFICIENT OPERATIONS

15.1 There shall be no interference by the Union with the Employers' right to operate efficiently and to change

*Exhibit 4*

methods of work and to utilize laborsaving devices and to direct the work through employer representatives while explicitly observing the provisions and conditions of the Agreement protecting the safety and welfare of the employees. "Speed-up" refers to an onerous workload on the individual worker; it shall not be construed to refer to increased production resulting from more efficient utilization and organization of the workforce, introduction of laborsaving devices, or removal of work restrictions.

15.11 In order to avoid disputes, the employer shall make every effort to discuss with the Union in advance the introduction of any major change in operations.

[61] 15.2 The employer shall not be required to hire unnecessary men. The number of men necessary shall be the number required to perform an operation in accordance with the provisions of 15.1, giving account to the contractual provisions for relief and the fact that during many operations all men will not be working at all times due to the cycle of the operation.

15.3 The Employers shall have the right to propose changes in working and dispatching rules that they claim are in conflict with the intent of provisions incorporated in this Agreement. The Joint Coast Labor Relations Committee may refer proposed changes that are of only local significance to the local level for negotiation. Any such change agreed to at the local level must be approved at the coast level before being put into operation. Any proposal referred to the local level and not resolved within thirty (30) days thereafter shall automatically return to the Joint Coast Labor Relations Committee.

15.4 Any disputes concerning the interpretation or application of provisions of this Agreement relating to the subject matter of this Section 15 may be submitted directly to the Joint Coast Labor Relations Committee.



447a

*Exhibit 4*

SECTION 16

SAFETY

16.1 Recognizing that prevention of accidents is [62] mutually beneficial, the responsibility of the parties in respect thereto shall be as follows:

16.11 The Union and the Employers will abide by the rules set forth in the existing Pacific Coast Marine Safety Code which shall be applicable in all ports covered by the Agreement.

16.12 The Employers will provide safe gear and safe working conditions and comply with all safety rules.

16.13 Each individual employer will continue to furnish protective clothing or devices as he did on October 18, 1960, even though not specifically required by the Pacific Coast Marine Safety Code. At the local level the parties will from time to time review the questions of protective clothing and devices and arrive at and maintain an orderly procedure for the issuance, safeguarding, and return of the items furnished by the employers.

16.14 The Employers will maintain, direct and administer an adequate accident prevention program.

16.15 The Union will cooperate in this program and develop and maintain procedures to influence all longshoremen to cooperate in every way that will help prevent industrial accidents and minimize injuries when accidents occur.

16.16 The employees individually must comply with all safety rules and cooperate with management in the carrying out of the accident prevention program.

[63] 16.2 To make effective the above statements and promote on the job accident prevention, employer-employee



*Exhibit 4*

committees will be established in each port. These committees will consist of equal numbers of employer and employee representatives at the job level. Each category of employees should be represented. Employers' representatives should be from the supervisory level. The purpose of the committees will be to obtain the interest of the men in accident prevention by making them realize that they have a part in the program, to direct their attention to the real causes of accidents and provide a means for making practical use of the intimate knowledge of working conditions and practices of the men on the job. It is further intended that this program will produce mutually practical and effective recommendations regarding corrections of accident-producing circumstances and conditions.

[79] SECTION 18

GOOD FAITH GUARANTEE

18.1 As an explicit condition hereof, the parties are committed to observe this Agreement in good faith. The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge. The Employers give the same guarantee of good faith observance on their part.

[80] SECTION 19

STEAM SCHOONERS

19.1 The provisions of this Agreement shall apply to all longshoreman's work, as defined in Section 1, on or in connection with steam schooners with the exceptions as set forth below:

19.11 A steam schooner is any dry cargo vessel plying in the steam schooner trade.

*Exhibit 4*

19.12 The steam schooner trade is hereby defined as the operation of steam schooners between the ports of California, Oregon and Washington and between these ports and British Columbia and Alaska; provided that such definition does not include vessels operating between Seattle and Puget Sound ports and Alaska.

19.13 Longshoremen shall perform all deck work and subject to 1.3, shall work aboard ships in accordance with the following:

19.131 Steam schooners are Class A when longshoremen are being assigned all of the longshore work except the work performed at one hatch or gear, or the work being performed in the handling of certain cargoes requiring the use of two gears, such as piling, poles, logs, etc.

19.132 On each call of a steam schooner operating Class A: at any port the employer assigns the vessel's members of the deck department (hereinafter referred to as "sailor gang") to one hatch selected for reasons of good ship operations. During such call the sailor gang is shifted out of that hatch [81] to handle cargo at another hatch only as stated above in 19.131 or when sufficient longshoremen are not available. For the purposes herein, San Francisco is one port and the East Bay is one port.

19.133 Gear up or down and hatches off or on by the sailors is permitted on Class A vessels. The time for starting longshoremen shall not be delayed beyond the regular starting time for starting a shift in order to permit sailors to do such work.

19.134 Tidewater ports that have a working arrangement which depends on conditions of the tide rather than the hours of the day should define such practices by a local working rule or rules, and until they are placed in writing such past practices shall continue.

*Exhibit 4*

19.14 LSM-type vessels are Class A provided that longshoremen perform the following work at all times they are available: two hook-on men, one utility man, one hatch tender and, subject to 1.3, one crane operator, both in loading and discharging. Longshoremen shall perform work aboard these vessels only when called upon to do so.

19.15 When an employer fails to assign sufficient work to longshoremen at any hatch or hatches to meet the qualifications for Class A, then a vessel is Class B and in connection therewith longshoremen shall perform work aboard ship only when called upon to do so.

19.151 A vessel may switch from Class A to Class B or from Class B to Class A on an hour by hour basis.

[82] 19.2 No arbitrator may consider or determine any issue regarding the scope of work of longshoremen or others to perform cargo work on steam schooners or make any decision denying the right of crew members to perform such cargo work, but the arbitrators may determine any other question or issue arising in connection with the steam schooner trade, including issues arising under Section 11 and issues regarding classifications A and B.

• • •  
[83] SECTION 21

WELFARE, PENSION, MECHANIZATION AND  
MODERNIZATION PLANS

21.1 The parties hereto have agreements on the subjects of Welfare, Pensions and on Mechanization and Modernization for longshoremen covered by this Agreement as set forth in the Second Amended ILWU-PMA Welfare Agreement and ILWU-PMA Welfare Fund—Declaration of Trust, the First Amended ILWU-PMA Pension Agreement

*Exhibit 4*

and ILWU-PMA Pension Fund—Declaration of Trust, the ILWU-PMA Supplemental Agreement on Mechanization and Modernization and the Trust Indentures established under the ILWU-PMA Mechanization and Modernization Plan.

[84] SECTION 22

MODIFICATION

22.1 No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto.

22.2 All joint working and dispatching rules shall remain in effect unless changed pursuant to Section 15. All other restrictions on the employer or longshoremen that are in conflict with the provisions of this Agreement are null and void.

22.3 The parties agree to meet for the purpose of codifying their agreement with respect to the subject matter covered in arbitrators' awards and rulings of the Joint Coast Labor Relations Committee. The parties will incorporate that agreement into the Pacific Coast Longshore Agreement at a time and in a manner to be agreed to by the parties.

*Exhibit 4*

[85] IN WITNESS WHEREOF, the parties hereto have signed this Agreement setting forth their agreement signed May 9, 1962 as modified on June 22, 1962.

PACIFIC MARITIME

ASSOCIATION

on behalf of its members.

INTERNATIONAL

LONGSHOREMEN'S AND

WAREHOUSEMEN'S

UNION

on behalf of itself and each and all of its longshore locals in California, Oregon and Washington and all employees performing work under the scope, terms and conditions of this Agreement.

/s/ J. Paul St. Sure

/s/ J. A. Robertson

/s/ Harry Bridges

/s/ H. J. Bodine

/s/ L. B. Thomas



453a

*Exhibit 4***[86] WAGE SCHEDULE 1962-1963 \* BASE RATE**

| Penalty<br>**   | First and Second Shifts |       |       | Third Shift |        |
|-----------------|-------------------------|-------|-------|-------------|--------|
|                 | ST                      | OT    | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....      | 3.06                    | 4.59  | 6.885 | 5.51        | 8.265  |
| 10¢ .....       | 3.16                    | 4.74  | 7.11  | 5.66        | 8.49   |
| 20¢ .....       | 3.26                    | 4.89  | 7.335 | 5.81        | 8.715  |
| 30¢ .....       | 3.36                    | 5.04  | 7.56  | 5.96        | 8.94   |
| 45¢ .....       | 3.51                    | 5.265 | 7.90  | 6.185       | 9.28   |
| 80¢ .....       | 3.86                    | 5.79  | 8.685 | 6.71        | 10.065 |
| 85¢ .....       | 3.91                    | 5.865 | 8.80  | 6.785       | 10.18  |
| \$1.20 .....    | 4.26                    | 6.39  | 9.585 | 7.31        | 10.965 |
| Explosives .... | 6.12                    | 9.18  | 13.77 | 10.10       | 15.15  |

**[87] WAGE SCHEDULE 1962-1963 \* 15¢ SKILL**

| Penalty<br>**   | First and Second Shifts |       |       | Third Shift |        |
|-----------------|-------------------------|-------|-------|-------------|--------|
|                 | ST                      | OT    | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....      | 3.21                    | 4.815 | 7.22  | 5.78        | 8.67   |
| 10¢ .....       | 3.31                    | 4.965 | 7.45  | 5.93        | 8.895  |
| 20¢ .....       | 3.41                    | 5.115 | 7.67  | 6.08        | 9.12   |
| 30¢ .....       | 3.51                    | 5.265 | 7.90  | 6.23        | 9.345  |
| 45¢ .....       | 3.66                    | 5.49  | 8.235 | 6.455       | 9.68   |
| 80¢ .....       | 4.01                    | 6.015 | 9.02  | 6.98        | 10.47  |
| 85¢ .....       | 4.06                    | 6.09  | 9.135 | 7.055       | 10.58  |
| \$1.20 .....    | 4.41                    | 6.615 | 9.92  | 7.58        | 11.37  |
| Explosives .... | 6.27                    | 9.405 | 14.11 | 10.37       | 15.555 |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

(Exh. 4, 88-89)

454a

*Exhibit 4*

**[88] WAGE SCHEDULE 1962-1963 \* 20¢ SKILL**

| Penalty<br>**   | First and Second Shifts |       |        | Third Shift |        |
|-----------------|-------------------------|-------|--------|-------------|--------|
|                 | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....      | 3.26                    | 4.89  | 7.335  | 5.87        | 8.805  |
| 10¢ .....       | 3.36                    | 5.04  | 7.56   | 6.02        | 9.03   |
| 20¢ .....       | 3.46                    | 5.19  | 7.785  | 6.17        | 9.255  |
| 30¢ .....       | 3.56                    | 5.34  | 8.01   | 6.32        | 9.48   |
| 45¢ .....       | 3.71                    | 5.565 | 8.35   | 6.545       | 9.82   |
| 80¢ .....       | 4.06                    | 6.09  | 9.135  | 7.07        | 10.605 |
| 85¢ .....       | 4.11                    | 6.165 | 9.25   | 7.145       | 10.72  |
| \$1.20 .....    | 4.46                    | 6.69  | 10.035 | 7.67        | 11.505 |
| Explosives .... | 6.32                    | 9.48  | 14.22  | 10.46       | 15.69  |

**[89] WAGE SCHEDULE 1962-1963 \* 25¢ SKILL**

| Penalty<br>**  | First and Second Shifts |       |       | Third Shift |        |
|----------------|-------------------------|-------|-------|-------------|--------|
|                | ST                      | OT    | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....     | 3.31                    | 4.965 | 7.45  | 5.96        | 8.94   |
| 10¢ .....      | 3.41                    | 5.115 | 7.67  | 6.11        | 9.165  |
| 20¢ .....      | 3.51                    | 5.265 | 7.90  | 6.26        | 9.39   |
| 30¢ .....      | 3.61                    | 5.415 | 8.12  | 6.41        | 9.615  |
| 45¢ .....      | 3.76                    | 5.64  | 8.46  | 6.635       | 9.95   |
| 80¢ .....      | 4.11                    | 6.165 | 9.25  | 7.16        | 10.74  |
| 85¢ .....      | 4.16                    | 6.24  | 9.36  | 7.235       | 10.85  |
| \$1.20 .....   | 4.51                    | 6.765 | 10.15 | 7.76        | 11.64  |
| Explosives ... | 6.37                    | 9.555 | 14.33 | 10.55       | 15.825 |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

455a

*Exhibit 4***[90] WAGE SCHEDULE 1962-1963\* 30¢ SKILL**

| Penalty<br>**  | First and Second Shifts |       |        | Third Shift |        |
|----------------|-------------------------|-------|--------|-------------|--------|
|                | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....     | 3.36                    | 5.04  | 7.56   | 6.05        | 9.075  |
| 10¢ .....      | 3.46                    | 5.19  | 7.785  | 6.20        | 9.30   |
| 20¢ .....      | 3.56                    | 5.34  | 8.01   | 6.35        | 9.525  |
| 30¢ .....      | 3.66                    | 5.49  | 8.235  | 6.50        | 9.75   |
| 45¢ .....      | 3.81                    | 5.715 | 8.57   | 6.725       | 10.09  |
| 80¢ .....      | 4.16                    | 6.24  | 9.36   | 7.25        | 10.875 |
| 85¢ .....      | 4.21                    | 6.315 | 9.47   | 7.325       | 10.99  |
| \$1.20 .....   | 4.56                    | 6.84  | 10.26  | 7.85        | 11.775 |
| Explosives ... | 6.42                    | 9.63  | 14.445 | 10.64       | 15.96  |

**[91] WAGE SCHEDULE 1962-1963\* 40¢ SKILL**

| Penalty<br>**  | First and Second Shifts |       |        | Third Shift |        |
|----------------|-------------------------|-------|--------|-------------|--------|
|                | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....     | 3.46                    | 5.19  | 7.785  | 6.23        | 9.345  |
| 10¢ .....      | 3.56                    | 5.34  | 8.01   | 6.38        | 9.57   |
| 20¢ .....      | 3.66                    | 5.49  | 8.235  | 6.53        | 9.795  |
| 30¢ .....      | 3.76                    | 5.64  | 8.46   | 6.68        | 10.02  |
| 45¢ .....      | 3.91                    | 5.865 | 8.80   | 6.905       | 10.36  |
| 80¢ .....      | 4.26                    | 6.39  | 9.585  | 7.43        | 11.145 |
| 85¢ .....      | 4.31                    | 6.465 | 9.70   | 7.505       | 11.26  |
| \$1.20 .....   | 4.66                    | 6.99  | 10.485 | 8.03        | 12.045 |
| Explosives ... | 6.52                    | 9.78  | 14.67  | 10.82       | 16.23  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

*Exhibit 4***[92] WAGE SCHEDULE 1963-1964\* BASE RATE**

| Penalty<br>**    | First and Second Shifts |       |        | Third Shift |        |
|------------------|-------------------------|-------|--------|-------------|--------|
|                  | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....       | 3.19                    | 4.785 | 7.18   | 5.74        | 8.61   |
| 10¢ .....        | 3.29                    | 4.935 | 7.40   | 5.89        | 8.835  |
| 20¢ .....        | 3.39                    | 5.085 | 7.63   | 6.04        | 9.06   |
| 30¢ .....        | 3.49                    | 5.235 | 7.85   | 6.19        | 9.285  |
| 45¢ .....        | 3.64                    | 5.46  | 8.19   | 6.415       | 9.62   |
| 80¢ .....        | 3.99                    | 5.985 | 8.98   | 6.94        | 10.41  |
| 85¢ .....        | 4.04                    | 6.06  | 9.09   | 7.015       | 10.52  |
| \$1.20 .....     | 4.39                    | 6.585 | 9.88   | 7.54        | 11.31  |
| Explosives ..... | 6.38                    | 9.57  | 14.355 | 10.525      | 15.79  |

**[93] WAGE SCHEDULE 1963-1964\* 15¢ SKILL**

| Penalty<br>**    | First and Second Shifts |       |        | Third Shift |        |
|------------------|-------------------------|-------|--------|-------------|--------|
|                  | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....       | 3.34                    | 5.01  | 7.515  | 6.01        | 9.015  |
| 10¢ .....        | 3.44                    | 5.16  | 7.74   | 6.16        | 9.24   |
| 20¢ .....        | 3.54                    | 5.31  | 7.965  | 6.31        | 9.465  |
| 30¢ .....        | 3.64                    | 5.46  | 8.19   | 6.46        | 9.69   |
| 45¢ .....        | 3.79                    | 5.685 | 8.53   | 6.685       | 10.03  |
| 80¢ .....        | 4.14                    | 6.21  | 9.315  | 7.21        | 10.815 |
| 85¢ .....        | 4.19                    | 6.285 | 9.43   | 7.285       | 10.93  |
| \$1.20 .....     | 4.45                    | 6.81  | 10.215 | 7.81        | 11.715 |
| Explosives ..... | 6.53                    | 9.795 | 14.69  | 10.795      | 16.19  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

457a

*Exhibit 4***[94] WAGE SCHEDULE 1963-1964\* 20¢ SKILL**

| Penalty<br>**   | First and Second Shifts |       |        | Third Shift |        |
|-----------------|-------------------------|-------|--------|-------------|--------|
|                 | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....      | 3.39                    | 5.085 | 7.63   | 6.10        | 9.15   |
| 10¢ .....       | 3.49                    | 5.235 | 7.85   | 6.25        | 9.375  |
| 20¢ .....       | 3.59                    | 5.385 | 8.08   | 6.40        | 9.60   |
| 30¢ .....       | 3.69                    | 5.535 | 8.30   | 6.55        | 9.825  |
| 45¢ .....       | 3.84                    | 5.76  | 8.64   | 6.775       | 10.16  |
| 80¢ .....       | 4.19                    | 6.285 | 9.43   | 7.30        | 10.95  |
| 85¢ .....       | 4.24                    | 6.36  | 9.54   | 7.375       | 11.06  |
| \$1.20 .....    | 4.59                    | 6.885 | 10.33  | 7.90        | 11.85  |
| Explosives .... | 6.58                    | 9.87  | 14.805 | 10.885      | 16.33  |

**[95] WAGE SCHEDULE 1963-1964\* 25¢ SKILL**

| Penalty<br>**   | First and Second Shifts |       |       | Third Shift |        |
|-----------------|-------------------------|-------|-------|-------------|--------|
|                 | ST                      | OT    | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....      | 3.44                    | 5.16  | 7.74  | 6.19        | 9.285  |
| 10¢ .....       | 3.54                    | 5.31  | 7.965 | 6.34        | 9.51   |
| 20¢ .....       | 3.64                    | 5.46  | 8.19  | 6.49        | 9.735  |
| 30¢ .....       | 3.74                    | 5.61  | 8.415 | 6.64        | 9.96   |
| 45¢ .....       | 3.89                    | 5.835 | 8.75  | 6.865       | 10.30  |
| 80¢ .....       | 4.24                    | 6.36  | 9.54  | 7.39        | 11.085 |
| 85¢ .....       | 4.29                    | 6.435 | 9.65  | 7.465       | 11.20  |
| \$1.20 .....    | 4.64                    | 6.96  | 10.44 | 7.99        | 11.985 |
| Explosives .... | 6.63                    | 9.945 | 14.92 | 10.975      | 16.46  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules



(Exh. 4, 96-97)

458a

*Exhibit 4*

[96] WAGE SCHEDULE 1963-1964\* 30¢ SKILL

|                 |      |       |       |        |        |
|-----------------|------|-------|-------|--------|--------|
| None .....      | 3.49 | 5.235 | 7.85  | 6.28   | 9.42   |
| 10¢ .....       | 3.59 | 5.385 | 8.08  | 6.43   | 9.645  |
| 20¢ .....       | 3.69 | 5.535 | 8.30  | 6.58   | 9.87   |
| 30¢ .....       | 3.79 | 5.685 | 8.53  | 6.73   | 10.095 |
| 45¢ .....       | 3.94 | 5.91  | 8.865 | 6.955  | 10.43  |
| 80¢ .....       | 4.29 | 6.435 | 9.65  | 7.48   | 11.22  |
| 85¢ .....       | 4.34 | 6.51  | 9.765 | 7.555  | 11.33  |
| \$1.20 .....    | 4.69 | 7.035 | 10.55 | 8.08   | 12.12  |
| Explosives .... | 6.68 | 10.02 | 15.03 | 11.065 | 16.60  |

[97] WAGE SCHEDULE 1963-1964\* 40¢ SKILL

| Penalty<br>**   | First and Second Shifts |       |        | Third Shift |        |
|-----------------|-------------------------|-------|--------|-------------|--------|
|                 | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....      | 3.59                    | 5.385 | 8.08   | 6.46        | 9.69   |
| 10¢ .....       | 3.69                    | 5.535 | 8.30   | 6.61        | 9.915  |
| 20¢ .....       | 3.79                    | 5.685 | 8.53   | 6.76        | 10.14  |
| 30¢ .....       | 3.89                    | 5.835 | 8.75   | 6.91        | 10.365 |
| 45¢ .....       | 4.04                    | 6.06  | 9.09   | 7.135       | 10.70  |
| 80¢ .....       | 4.39                    | 6.585 | 9.88   | 7.66        | 11.49  |
| 85¢ .....       | 4.44                    | 6.66  | 9.99   | 7.735       | 11.60  |
| \$1.20 .....    | 4.79                    | 7.185 | 10.78  | 8.26        | 12.39  |
| Explosives .... | 6.78                    | 10.17 | 15.255 | 11.245      | 16.87  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

(Exh. 4; 89-99)

459a

*Exhibit 4***[98] WAGE SCHEDULE 1964-1965\* BASE RATE**

| Penalty<br>**   | First and Second Shifts |       |       | Third Shift |        |
|-----------------|-------------------------|-------|-------|-------------|--------|
|                 | ST                      | OT    | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....      | 3.32                    | 4.98  | 7.47  | 5.975       | 8.96   |
| 10¢ .....       | 3.42                    | 5.13  | 7.695 | 6.125       | 9.19   |
| 20¢ .....       | 3.52                    | 5.28  | 7.92  | 6.275       | 9.41   |
| 30¢ .....       | 3.62                    | 5.43  | 8.145 | 6.425       | 9.64   |
| 45¢ .....       | 3.77                    | 5.655 | 8.48  | 6.65        | 9.975  |
| 80¢ .....       | 4.12                    | 6.18  | 9.27  | 7.175       | 10.76  |
| 85¢ .....       | 4.17                    | 6.255 | 9.38  | 7.25        | 10.875 |
| \$1.20 .....    | 4.52                    | 6.78  | 10.17 | 7.775       | 11.66  |
| Explosives .... | 6.64                    | 9.96  | 14.94 | 10.955      | 16.43  |

**[99] WAGE SCHEDULE 1964-1965\* 15¢ SKILL**

| Penalty<br>**   | First and Second Shifts |        |       | Third Shift |        |
|-----------------|-------------------------|--------|-------|-------------|--------|
|                 | ST                      | OT     | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....      | 3.47                    | 5.205  | 7.81  | 6.245       | 9.37   |
| 10¢ .....       | 3.57                    | 5.355  | 8.03  | 6.395       | 9.59   |
| 20¢ .....       | 3.67                    | 5.505  | 8.26  | 6.545       | 9.82   |
| 30¢ .....       | 3.77                    | 5.655  | 8.48  | 6.695       | 10.04  |
| 45¢ .....       | 3.92                    | 5.88   | 8.82  | 6.92        | 10.38  |
| 80¢ .....       | 4.27                    | 6.405  | 9.61  | 7.445       | 11.17  |
| 85¢ .....       | 4.32                    | 6.48   | 9.72  | 7.52        | 11.28  |
| \$1.20 .....    | 4.67                    | 7.005  | 10.51 | 8.045       | 12.07  |
| Explosives .... | 6.79                    | 10.185 | 15.28 | 11.225      | 16.84  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

(Exh. 4, 100-101)

460a

**Exhibit 4**

**[100] WAGE SCHEDULE 1964-1965\* 20¢ SKILL**

| Penalty<br>** | ST   | First and Second Shifts |       | Third Shift |        |
|---------------|------|-------------------------|-------|-------------|--------|
|               |      | OT                      | 1½ OT | 0-5 Hrs     | 6th Hr |
| None          | 3.52 | 5.28                    | 7.92  | 6.335       | 9.50   |
| 10¢           | 3.62 | 5.43                    | 8.145 | 6.485       | 9.73   |
| 20¢           | 3.72 | 5.58                    | 8.37  | 6.635       | 9.95   |
| 30¢           | 3.82 | 5.73                    | 8.595 | 6.785       | 10.18  |
| 45¢           | 3.97 | 5.955                   | 8.93  | 7.01        | 10.515 |
| 80¢           | 4.32 | 6.48                    | 9.72  | 7.535       | 11.30  |
| 85¢           | 4.37 | 6.555                   | 9.83  | 7.61        | 11.415 |
| \$1.20        | 4.72 | 7.08                    | 10.62 | 8.135       | 12.20  |
| Explosives    | 6.84 | 10.26                   | 15.39 | 11.315      | 16.97  |

**[101] WAGE SCHEDULE 1964-1965\* 25¢ SKILL**

| Penalty<br>** | ST   | First and Second Shifts |       | Third Shift |        |
|---------------|------|-------------------------|-------|-------------|--------|
|               |      | OT                      | 1½ OT | 0-5 Hrs     | 6th Hr |
| None          | 3.57 | 5.355                   | 8.03  | 6.425       | 9.64   |
| 10¢           | 3.67 | 5.505                   | 8.26  | 6.575       | 9.86   |
| 20¢           | 3.77 | 5.655                   | 8.48  | 6.725       | 10.09  |
| 30¢           | 3.87 | 5.805                   | 8.71  | 6.875       | 10.31  |
| 45¢           | 4.02 | 6.03                    | 9.045 | 7.10        | 10.65  |
| 80¢           | 4.37 | 6.555                   | 9.83  | 7.625       | 11.44  |
| 85¢           | 4.42 | 6.63                    | 9.945 | 7.70        | 11.55  |
| \$1.20        | 4.77 | 7.155                   | 10.73 | 8.225       | 12.34  |
| Explosives    | 6.89 | 10.335                  | 15.50 | 11.405      | 17.11  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules.

461a

*Exhibit 4***[102] WAGE SCHEDULE 1964-1965\* 30¢ SKILL**

| Penalty<br>**   | First and Second Shifts |       |        | Third Shift |        |
|-----------------|-------------------------|-------|--------|-------------|--------|
|                 | ST                      | OT    | 1½ OT  | 0-5 Hrs     | 6th Hr |
| None .....      | 3.62                    | 5.43  | 8.145  | 6.515       | 9.77   |
| 10¢ .....       | 3.72                    | 5.58  | 8.37   | 6.665       | 10.00  |
| 20¢ .....       | 3.82                    | 5.73  | 8.595  | 6.815       | 10.22  |
| 30¢ .....       | 3.92                    | 5.88  | 8.82   | 6.965       | 10.45  |
| 45¢ .....       | 4.07                    | 6.105 | 9.16   | 7.19        | 10.785 |
| 80¢ .....       | 4.42                    | 6.63  | 9.945  | 7.715       | 11.57  |
| 85¢ .....       | 4.47                    | 6.705 | 10.06  | 7.79        | 11.685 |
| \$1.20 .....    | 4.82                    | 7.23  | 10.845 | 8.315       | 12.47  |
| Explosives .... | 6.94                    | 10.41 | 15.615 | 11.495      | 17.24  |

**[103] WAGE SCHEDULE 1964-1965\* 40¢ SKILL**

| Penalty<br>**   | First and Second Shifts |       |       | Third Shift |        |
|-----------------|-------------------------|-------|-------|-------------|--------|
|                 | ST                      | OT    | 1½ OT | 0-5 Hrs     | 6th Hr |
| None .....      | 3.72                    | 5.58  | 8.37  | 6.695       | 10.04  |
| 10¢ .....       | 3.82                    | 5.73  | 8.595 | 6.845       | 10.27  |
| 20¢ .....       | 3.92                    | 5.88  | 8.82  | 6.995       | 10.49  |
| 30¢ .....       | 4.02                    | 6.03  | 9.045 | 7.145       | 10.72  |
| 45¢ .....       | 4.17                    | 6.255 | 9.38  | 7.37        | 11.055 |
| 80¢ .....       | 4.52                    | 6.78  | 10.17 | 7.895       | 11.84  |
| 85¢ .....       | 4.57                    | 6.855 | 10.28 | 7.97        | 11.955 |
| \$1.20 .....    | 4.92                    | 7.38  | 11.07 | 8.495       | 12.74  |
| Explosives .... | 7.04                    | 10.56 | 15.84 | 11.675      | 17.51  |

\* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

\*\*Penalty Cargo List follows Wage Schedules

*Exhibit 4*

[104] PENALTY CARGO LIST

10¢ PENALTY

Following specified commodities in lots of 25 tons or more:

Alfalfa Meal.

Bones, untreated or offensive, in sacks.

Borate (Razorite) when packed in cloth containers with no inner lining.

Calcine Coke.

Caustic Soda in drums.

Celite and Decalite in sacks.

Coal in sacks.

Cement.

Creosote when not crated.

Creosoted wood products unless boxed or crated.

Fertilizers, following, in bags:

Tankage, animal, fish, fish-meal, guano, blood meal and bone meal.

Glass, broken, in sacks.

Green hides.

Herring, in boxes and barrels.

Iron blisters, molded, from Europe.

Lime, in barrels and loose mesh sacks.

Lime, dehydrated, in sacks.

Lumber, logs and lumber products loaded out of water.

Lumber, chemically treated, uncrated.

Lumber, freshly painted and paint is wet.

Meat scraps, in sacks.

Nitrate, crude, untreated in sacks.

Ore, in sacks.

[105] Phosphates, crude, untreated, in sacks (Not considered treated by the mere process of grinding).

Pig Iron, rough piled, when hand handled.

Plaster, in sacks without inner containers.

Refrigerated Cargo: Handling and stowing refrigerator space: meats, fowl and other similar cargoes to be transported at temperatures of freezing or below in boxes.

(In lots 25 tons or more, or if job lasts one hour or



463a

*Exhibit 4*

more, penalty to apply on all time worked on refrigerator cargo.)

Rubber, Baled, Covered with Talc: To be paid to the gang actually handling this commodity including the deck men, front men, jitney driver and the dockmen working as part of the gang. If another gang is working in the same hatch on a non-penalty commodity, the ship gang members of said gang shall likewise be paid the penalty provided the holdmen of such gang are working the same deck or compart-

ment as the gang handling the baled rubber covered with talc.

Sacks: Loading only and to apply to the entire loading operation where table or chutes are used and the men are handling sacks weighing 120 pounds or over on the basis of one man per sack.

Salt blocks in sacks.

Scrap meal in bulk and bales excluding rails, plates, drums, car wheels and axles.

[106] Soda ash in bags

Sulphur, dehydrated, in sacks.

Cargoes leaking or sifting due to damage or faulty containers:

Cottonseed meal in sacks.

Aniline dyes.

Bichromate of soda in sacks.

Fish oil, whale oil and Oriental oils in drums, barrels or cases.

Lamp Black.

Tapioca Flour.

Working in cramped space:

Holdmen only—All paper and pulp in packages weighing 300 pounds or over per package only

when winging up and when stowing in fore peaks, after peaks and special compartments

*Exhibit 4*

other than regular cargo spaces. (This does not apply to rolls:)  
When there is less than six feet of headroom (a)

loading cargo in hold on top of bulk grain (b) covering logs or piling with lumber products; paid to siderunners when used.

20¢ PENALTY

Shoveling—All commodities except those earning higher rate.

Creosoted products out of water — Holdmen and boom men only.

[107] 30¢ PENALTY

Bulk Grain—Boardmen only. Bulk Phosphate Rock.

45¢ PENALTY

Bulk: Sulphur, Soda Ash, and Crude untreated Potash.

80¢ PENALTY

Bulk Bones, untreated or offensive.

85¢ PENALTY

Damaged cargo:

Cargo badly damaged by fire, collision, springing a leak or stranding, for that part of cargo only which is in a badly damaged or offensive condition.

Cargo damaged from causes other than those enumerated above, shall, if inspection warrants, pay the damaged cargo rate or such other rate deter-

*Exhibit 4*

mined by the Port Labor Relations Committee for handling that part of the cargo only which is in a badly damaged or offensive condition. This provision shall apply only to

individual consignments which are damaged and shall not empower any committee to add to or detract from penalty cargo rates herein specified.

[108] \$1.20 PENALTY

Working hatch when fire burning or cargo smoldering in hatch.

EXPLOSIVES

When working Class A explosives as defined by Interstate Commerce Commission regulation (Topping's Manual) all men working in connection with

a ship which is loading explosives are to receive the penalty during such time as explosives are actually being worked.

## Exhibit 5-A

[1] January 4, 1961

### REPORT OF PMA COMMITTEE ON WORK IMPROVEMENT FUND CONTRIBUTIONS PROCEDURES

#### *In General*

This is the report and recommendation of the special PMA Committee appointed to study the appropriate method of dividing the costs of the ILWU Modernization and Improvement Fund set forth in the Memorandum of Agreement with the ILWU of October 18, 1960.

The amount to be raised is \$5,000,000 per year for each of the years 1961 through 1965 and \$2,500,000 for the period January 1, 1966, through June 30, 1966. The agreement with the Union leaves to the Association the method to be used in raising these amounts. In the negotiations it was made very clear to the Union that this question was to be a wholly internal PMA matter. The Committee recommends that the contributions to the Fund be raised on a cargo tonnage basis with an annual review by the Association to determine the equity of the formula as conditions change.

#### *Methods of Contributions Considered*

The Committee's principal deliberations centered on three methods of contribution—(1) contributions based on straight time man-hours of each employer; (2) contributions based on manifested cargo tonnage; (3) a combination of (1) and (2). These methods are discussed in detail below.

In addition to these methods of dividing the cost of the program, the Committee also discussed briefly several other methods which were finally discarded as not worthy of serious consideration. These included (a) raising part of

*Exhibit 5-A*

the Fund by a charge on a cargo tonnage moving in containers and (b) dividing the cost of the Fund by a contribution system based on specific [2] measurement of improvements in longshore productivity of each operator over a base year.

The first of these was felt to inhibit unnecessarily the development of this particular type of labor-saving operation and to penalize what is only one of many types of labor-saving techniques that are possible under the new agreement.

The productivity improvement measurement method has much to commend it. It is, at least at first blush, precise in placing the burden of the Fund on those benefiting from it. It was felt, however, that it would be a cumbersome and over-elaborate method of dividing the cost of the Fund and one that would be difficult to administer. Concern was expressed, for example, over the difficulty of determining the source of the productivity improvement and whether it could be attributed to the new agreement or whether it arose from an external factor such as a new terminal. One of the principal objections to such a plan was the view that the establishment of such a measurement system could lead to a renewal by the Union at the conclusion of the term of the present agreement of its demand for a share in the industry's productivity "savings." This was, in fact, the original demand of the Union when the negotiations which culminated in the Fund began. The Committee feels that PMA should avoid the establishment of an internal assessment system which is the very one the Union sought to impose on the industry and which, we are told, is still the position of several of the Union's influential leaders.



*Exhibit 5-A**The Man-Hour versus the Cargo Tonnage Method*

One of the principal methods proposed for the distribution of the cost of the Fund is one based on the number of hours of contract employment [3] given by each PMA employer. (It was assumed that those would be straight-time man-hours computed in the same manner as in the present PMA dues computation.) Most PMA funds, such as for pension, welfare and vacation benefits, are presently raised in this manner. To base the contributions on man-hours would, in effect, be to equate the Fund with wages. Some of the members of the Committee felt that the Fund was at least in part in payment for an agreement that would relieve all elements of the industry from contract work restrictions and should, therefore, be paid for on a wage basis since all operators can benefit from this aspect of the agreement.

The majority of the Committee, however, was of the view that the over-all intent of the agreement was to give the operators the freedom, each in its own way, *to reduce the number of man-hours* needed to load and discharge their cargo tonnage. They were struck by the inequity of a contribution formula based on man-hours which would provide for a decreasing percentage of the total contributions to the Fund by the operators which made greatest use of and received the greatest benefit from the new agreement. Thus, a hypothetical operator which could fully mechanize because of the freedom of operation permitted by the agreement would, if it eliminated all of its man-hours, pay nothing to the Fund that made its labor-saving possible. Even worse, such an operator would be substantially contributing to the loss of work opportunity of the ILWU work force. It is the fear of loss of work that has been the main impetus for the Union's insistence on obtaining this agreement and will undoubtedly be the principal ground for continuation or supplementation of

*Exhibit 5-A*

the Fund in future bargaining. Yet such an operator who would have aggravated the loss of work problem would make the least contribution to the Fund whose origin and existence is based on that problem.

[4] If all operators had an equal opportunity to make man-hour savings under the new agreement, there would be no serious objection to a man-hour method. Then it could be said that since each operator has an equal opportunity to shed man-hours and to reduce its share of the Fund contributions, it would have only itself to blame if it fell behind in the race to get rid of man-hours. But there is not an equality of opportunity for the inauguration of man-hour savings methods. Some steamship operators are engaged in trades where because of the types of cargo, multi-port operations or other operational problems involved, it is more difficult or less economically feasible to put into use labor-savings devices or techniques than in trades more suited to such methods.

It is argued, in favor of the man-hour approach, that the fact that an operator can reduce his share of the cost of the Fund by getting rid of man-hours makes such a method of contribution itself an important incentive to progress and efficiency in our industry. The Committee has taken the view, however, that the much larger savings of the cost of the man-hours themselves that are eliminated by taking advantage of the freedoms given by the new agreement are by all odds the prime incentive for labor-saving efforts and that the method of division of the cost of the Fund itself would not be a material influence. In short, the incentive factor that the method of contribution to the Fund represents is so minor that it should not interfere with the establishment of a contribution system that is equitable.

The elimination of both a man-hour formula and of a productivity improvement measurement method as bases

*Exhibit 5-A*

for Fund contributions leaves a formula based on cargo tonnage as the best remaining method of dividing the cost of the new agreement. This is the method the Committee recommends be adopted though admittedly it is a rough-and-ready way to divide the cost. [5] it lacks the precision of the productivity measurement method, for example. But it does divide the contribution on the basis of one form of measurement of volume of cargo-handling activity without being subject to the objectionable feature of the man-hour formula in which contributions are made in inverse proportion to realization of benefits from the new agreement.

The tonnage formula recommended by the majority of the Committee would be the same as the present tonnage formula used for the computation of a portion of the PMA dues. In this formula, bulk cargo tonnage is counted at one-fifth the value of general cargo tonnage. The tons are revenue tons—weight tons of 2,000 pounds, measurement tons of 40 cubic feet, and lumber at 1,000 board feet per ton. The cargo is that manifested for loading or discharging at Pacific Coast ports. Special rules apply to coastwise and transshipped cargo. The payments would be made by the employers of ILWU that is subject to the agreement.

*Some Objectionable Features of the Tonnage Formula*

There are some aspects of the tonnage formula that are objectionable. The majority of the Committee feels that these problems are less serious than those that would be created by adoption of the other alternative formulae, however.

Under a tonnage formula, all operators would be required to contribute to the cost of the new agreement. While it can be argued that this will force operators to contribute who expect to gain little advantage from the agreement, it is the view of the Committee that all operators should

*Exhibit 5-A*

contribute to the Fund on some basis because of the potential benefit that is available, in some degree at least, for all under the work restriction removal provisions of the agreement. Operators who expect to gain only small [6] benefit from the new agreement can, under the tonnage method, at least assure themselves that their contribution will not grow in future years as other more fortunately-situated operators begin eliminating substantial numbers of man-hours. The only alternative system that would meet the needs of such operators would be one measuring productivity. The objections to such a system have been discussed earlier in this report.

It has been suggested that adoption of the tonnage formula will create a poor precedent for future collective bargaining on mechanization and removal of work restrictions. It is true that the industry would not want a specified tonnage assessment permanently established by agreement with the Union as a charge on all future cargo tonnage. This would be an irrational and unconscionable arrangement that would build an ever-increasing fund as total Pacific Coast cargo tonnage increases through natural economic forces. But the formula the Committee is proposing is an internal one, not one agreed to with the Union, and, even more important, is one that raises an agreed sum of money for an agreed period of time. If any additional fund is to be raised after the conclusion of this agreement, both the amount and the duration of that arrangement will have to be negotiated. The fact that the present Fund would be raised internally by PMA on a tonnage basis is not felt by the majority of the Committee to be a sufficiently influential or dangerous precedent for such future bargaining as to warrant its abandonment. This is particularly true since the Union has never urged a tonnage formula as a means of paying for the Fund.

It should also be pointed out that a man-hour or combination man-hour tonnage formula, or any other formula



*Exhibit 5-A*

we might adopt, is equally subject to the same danger of being taken over some day by the Union. The assumption by [7] the Union at the end of the present agreement of a man-hour formula as the basis for the industry's payments to the Fund, together with a demand to pay an increased total dollar amount per year to the Fund (which might well be demanded if there were a dramatic reduction in man-hours in the industry in the next five years), would be a disaster to those operators who could not achieve substantial man-hour savings. The greater part of the burden of the expanded Fund would fall on them. If there is any risk of a "take-over" by the Union of the internal contribution formula we now adopt, it is the Committee's view that a formula using a man-hour basis would be the most dangerous from this standpoint of all. Only if the same dollar amount of contribution per man-hour were retained, could a Union "take-over" of the man-hour formula be relatively harmless and even then it would have the inherent inequity between members described previously.

Another problem created by a tonnage formula is that it fails to charge cargo-handling activities in terminal operations for the benefits those operations will receive under the new agreement. The Committee concluded, however, that virtually all of this cargo is cargo that has been taken from a vessel or is destined for loading to a vessel. (It is estimated that only a small fraction of 1% of the total Pacific Coast cargo tonnage handled by longshore labor has not come from a vessel or is not destined for a vessel.) Thus, in most instances a charge against this tonnage would be a needless duplication of the proposed charge on manifested tonnage with the ultimate cost falling on the steamship operator in any event. Though there may be some few inequities in special circumstances arising from the proposed plan, it must be recognized that even greater



*Exhibit 5-A*

inequities arise from the adoption of the alternative man-hour formula.

[8] The entire lump sum benefits portion of the new agreement has Federal income tax problems under the applicable regulations, whatever contribution formula we adopt. It may be, however, that these serious problems are somewhat aggravated by a tonnage formula instead of a man-hour formula. The elimination of the tonnage formula will not, of itself, cure the problem, however. It will be some time before these tax problems are resolved. The Committee believes that the contribution formula the Association wishes to adopt, whatever it may be, should be put into effect. If it later appears that the elimination of that formula will help solve these tax problems, the formula could be converted retroactively to another with little more than some staff computation work and some payments adjustments, provided counsel moves to resolve the tax issue before the end of 1961. The Committee, after discussion with counsel, does not consider this tax factor a controlling one.

*The Combination Man-Hour and Tonnage Formula—*

The final vote of the Committee was not between a tonnage and a man-hour formula but instead between a tonnage formula and one based on a combination of tonnage and man-hours. The most frequently discussed combination is that now employed for the determination of the on-shore portion of the PMA dues. (This is presently on an approximately 60% man-hour and 40% tonnage basis.) One of the principal arguments for this formula is that it would camouflage the method of contribution to the Fund so that it couldn't be pre-empted by the Union in future negotiations as the means of determining what the Union should get. It also contained a partial man-hour assessment to meet the demands of those who feel that at least that portion

*Exhibit 5-A*

of the new agreement covering removal of work restrictions should be paid for on a man-hour basis.

[9] The majority of the Committee rejected this type of formula, however, on the theory that since, as indicated above, the entire purpose of the new agreement was to gain freedom to eliminate man-hours, whether by containerization, removal of work restrictions or otherwise, a formula that even in part would reduce the contributions of those getting increased benefit from the plan would be, even to that extent, inequitable.

A report of a minority of the Committee urging adoption of this formula accompanies this report.

*Annual Review—*

In addition to the recommendation of the adoption of a tonnage formula made by the majority of the Committee, the entire Committee recommends an annual review by the Association of the contribution formula at the end of each of the calendar years in which the agreement is in effect. It is entirely possible that great changes in labor-saving techniques, tonnage and factors not foreseen at this time, could cause the recommended formula to work a hardship on segments of the industry. Such annual reviews could lead to amendment of the formula to prevent the continuation of any such inequities that may develop.

COMMITTEE ON WORK IMPROVEMENT FUND  
CONTRIBUTION PROCEDURES

By PETER N. TEIGE,  
Chairman.

**Exhibit 5-B****[1] STATEMENT OF MINORITY OPINION  
ON ILWU FUNDING**

This statement summarizes the minority viewpoint of the sub-committee of the Coast Steering Committee charged with recommending methods for allocating among PMA member companies payments due under the ILWU modernization and improvement agreement.

Throughout the committee discussions the basic point in question was simply the relative merits of an allocation scheme based on tonnage handled versus one based on man-hours used. At the last meeting of the committee a vote was taken which resulted in a 4 to 2 majority in favor of the tonnage basis of payment allocation. It is the minority opinion that equitable allocation of payments among all member companies cannot be accomplished on the basis of either tonnage or man-hours alone and that instead a combination of these two measures is needed whereby part of the fund would be accumulated by tonnage assessments and part by man-hour assessments. As an integral part of this opinion it is further recommended that the funding be started in proportion 40% from tonnage and 60% from man-hours, and that every six months this proportionality be subject to formal PMA review to correct inequities that will become apparent as we gain experience and data on performance and cost changes under the new agreement.

In support of this minority recommendation the following points are offered for consideration by the PMA Coast Steering [2] Committee:

- (1) Funding on the basis of tonnage alone is in conflict with one of the basic agreed-on principles which guided negotiations for the modernization and improvement fund. This agreement recognized that there were many kinds of improvements available to the industry such as improved

*Exhibit 5-B*

docks, better terminal facilities, more effective supervision, better planning, improved ship designs, etc., which did not involve ILWU participation or concurrence and therefore did not incur any industry responsibility to the union. Largely for this reason the industry firmly rejected the union's proposal for a tonnage tax, pointing out that such a tax would contain an appreciable amount of un-earned tribute to the union and a significant penalty on management incentive. That we are now talking only about an intra-industry allocation scheme in no way changes the basic principle involved. Assessment on the basis of tonnage alone would still result in unfair discrimination against those management prerogatives that have no direct relationship to the objectives of the fund.

(2) Another guiding principle throughout the modernization and improvement negotiations was that mechanization and methods improvements could not be isolated from each other and their relative contributions to labor saving neatly measured. Nor could different companies adapt to or participate in specific innovations in any uniform way. For this reason the industry strongly resisted union pressures to [3] categorize specific improvement opportunities and instead insisted on a general buy-out of restrictive practices consistent with safe and humane working conditions. With this general approach it was agreed that all PMA members would have ample opportunity to share in some degree the benefits to be derived from the fund. In particular it is clear that all users of ILWU labor have something to gain from the elimination of restrictive work practices, whereas the opportunities for outright mechanization can be expected to vary widely from company to company. Assessment on either a pure tonnage or a pure man-hour basis would ignore these basic facts. For example there are many users and uses of ILWU man-hours that would not be covered under the tonnage reports to PMA.

*Exhibit 5-B*

which include only tons handled into and out of a port by member companies on a one-time basis. Thus the appreciable fraction of long-shore labor used in terminal and dock work or in cargo re-handling for operators' convenience would be participating in the fund free of cost to the employers of this labor. Under the tonnage assessment this cost would have to be spread over those employers reporting PMA tonnages, rather than be borne by the direct employer who has the most immediate opportunity to benefit from the improvements the fund is paying for. Similarly, an all-manhour assessment would ignore differences in labor-saving opportunity, but since no one is recommending this form of assessment it need not be discussed [4] further here. The point is that a combination tonnage-manhour assessment avoids the inequities of either one alone and in addition conforms to the original intent in the negotiations.

(3) Inherent in the funding agreement itself is an argument favoring the combination tonnage-manhour assessment. By specific agreement with the union the total fund will be accumulated in two separate and distinct parts: one at a rate of \$2,000,000 per year to cover the guaranteed wage portion of the contract, and one at a rate of \$3,000,000 per year to cover death and disability and supplemental retirement benefits. Since the first of these is insurance against a too-rapid loss in work opportunity, it is inconceivable that those companies who are most successful in reducing their labor requirements should contribute in decreasing proportion to the cost of this insurance. Clearly this is a case where the man-hour assessment would be inequitable and the tonnage assessment appropriate. On the other hand, the benefits portion of the total fund is to take care of career longshoremen as they drop out of the workforce at or near the normal rate of attrition. These men have been in the workforce because of the demands or tolerance of everyone employing ILWU labor and they are



*Exhibit 5-B*

therefore the responsibility of all companies who have been employing this labor in the past whether or not this employment can be directly related to incoming or outgoing cargo [5] on ships. For this portion of the fund then it seems clear that a man-hour assessment would be appropriate and equitable. This reasoning leads to the 40-60 ratio for tons and man-hours mentioned in the minority recommendation.

(4) On the matter of judging the equity of a tonnage versus a combination tonnage-manhour assessment it is unfortunately true that adequate data do not exist for a direct comparison of the two schemes. For this reason it is considered ill-advised to move to an entirely new assessment scheme until we have gained some operating experience under the new contract. The present assessment scheme for support of PMA operations has for some time corresponded roughly to the combined tonnage-manhour ratio developed in paragraph 3 above and since no great inequities have become apparent under its use it seems reasonable to expect that a continuation of this formula for a trial period would not create any undue hardships. It is not the minority contention that this should necessarily be the ultimate formula but only that it is a workable one until equitable adjustments can be made in the light of more quantitative knowledge of the issues involved.

(5). Initial use of the present PMA assessment formula has some significant minor advantages that should not be overlooked. In the first place the necessary reporting scheme already exists and is operating. A shift to an all-tonnage assessment would create a number of troublesome [6] problems that cannot be evaluated at this time. For example, in the case of non-member companies, the union now sees that man-hour assessments are paid to PMA. No such arrangement exists for administering a tonnage collection. Presumably one could be developed but it would set the

*Exhibit 6*

dangerous precedent of placing a tonnage tax in union hands—the very thing we have told them we could not and would not do.

(6) There are troublesome legal questions relating to the funding of benefits on a tonnage basis. There is no precedent for such funding and this is certain to create questions within Internal Revenue Service regarding the deductability of such contributions for tax purposes. Even if these questions can be ironed out it is likely that such contributions would have to be paid through stevedoring companies rather than directly to PMA.

1/4/61

---

**Exhibit 6**

[1] PACIFIC MARITIME ASSOCIATION  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

January 11, 1961

**To MEMBERS.**

At the Membership Meeting on Tuesday, January 10, 1961, duly called by notice dated January 5, 1961, a vote was taken on the method to be used for contributions to the ILWU-PMA Modernization and Improvement Fund.

The action taken by the Membership was as follows:

“It was regularly moved and seconded that the majority recommendation of the Committee appointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with

*Exhibit 6*

the understanding that the method of collection will receive continued study and be presented to the Membership again in six months."

A secret ballot was taken and the vote was polled as follows:

246—Yes

74—No

21—Withheld

67—Absent

Motion carried by a majority of the total voting strength of the Association Membership.

[2] A vote was also taken on the recommendation of the Board of Directors that the Agreement dated October 18, 1960, between the ILWU and PMA be ratified. This motion carried unanimously.

The Treasurer will notify you as to the contribution rates and effective date.

We call your attention to Section 3, Article XI of the Association's By-Laws, reading as follows:

"A member who has not authorized or accepted in writing such contract, commitment or undertaking and who has not voted in favor of the approval thereof or the delegation of authority with respect to the particular terms thereof shall not be bound by such contract, commitment or undertaking, if such member resigns within seven (7) days after the date of the vote thereon, whether taken in advance of or during the negotiations, or subsequent to the drafting of the contract, agreement or commitment in final form and submission to the membership for approval."

J. A. ROBERTSON,  
Secretary.

(Exh. 7, 1)

481a

**Exhibit 7**

**[1] WINCHESTER AGENCIES, INC.**  
Steamship Agents and Brokers  
351 California Street  
San Francisco 4, Calif.

January 17, 1961

Pacific Maritime Association  
16 California Street  
San Francisco, California

Attention: Mr. Paul St. Sure

Re: Volkswagen Importations  
PMA Special Tonnage Assessment

Gentlemen:

We understand that to finance a mechanization and improvement fund as recently agreed with the ILWU, the Pacific Maritime Association had adopted a special tonnage assessment of 27.5 cents per ton on general cargo and 5.5 cents per ton on bulk cargo. We are informed that the PMA proposes to levy this assessment per ton weight or measurement as manifested and reported to the PMA during 1959.

We are under instructions from our principals, Messrs. Volkswagenwerk, A. G. Shipping Department, Wolfsburg/Hanover, West Germany, to protest the application by Pacific Maritime Association of an assessment on a measurement basis against the discharge of unboxed automobiles. Our principals and we share with the PMA the hope that the recently concluded agreement with the ILWU will result in improvements of cargo-handling efficiencies and lowering of the net costs thereof on the Pacific Coast. On the other hand, we can only conclude that the Directors of your Association were not aware of the discriminatory burden

*Exhibit 7*

which a measurement ton basis of this special tonnage assessment would impose on the discharge of unboxed automobiles, viz:

On the premise that \$12.50 per revenue ton is the current average discharge cost of *packaged general cargo*, a tonnage assessment of 27.5 cents per ton W/M represents an approximately 2.2% increase in cargo-handling expenses. On the other hand, a measurement assessment of 27.5 cents per 40 cubic feet on typical shipments of *unboxed Volkswagen autos* represents an increase of more than 26% in the discharge costs of this commodity.

[2] *Illustration*—Assuming shipment 50% VW sedans and 50% VW transporters with current discharge costs \$10.45 per auto:

|   | <i>Sedan</i> | <i>Transporter</i> | <i>Average</i> |
|---|--------------|--------------------|----------------|
| Typical weight  | 1609 lbs.    | 2447 lbs.          | 2028 lbs.      |
| “ measurement   | 8.3 tons     | 11.8 tons          | 10.0 tons      |
| Assessment 27.5 cents per ton equals assessment per auto basis weight ton 2000# | \$0.22       | \$0.336            | \$0.278        |
| Equivalent increased costs  | 2.1%         | 3.2%               | 2.7%           |
| Basis measurement ton 40 cft.   | \$2.28       | \$3.245            | \$2.76         |
| Equivalent increased costs  | 21.8%        | 31.0%              | 26.4%          |

In view of the foregoing, it is requested that the Pacific Maritime Association reconsider the basis of the proposed tonnage assessment on the importation of unboxed foreign automobiles. We shall hold ourselves in readiness to discuss this matter in further detail with your Directors if



*Exhibit 7*

you so desire. In the meantime, may we offer the following additional comments:

1. Most of the Volkswagen movements to this Coast are effected in full cargo shipments in vessels under charter by Volkswagenwerk, A.G. Such vessels include timecharters or lumpsum FIO charters. Under timecharter, the auto manufacturer pays for the use of the vessel at a fixed rate per interval of time. Under the FIO charters, the freight is expressed as a lumpsum for a specific voyage. The timecharter hire or the lumpsum FIO freight gives to the charterer the exclusive use of the vessel and is payable to the shipowner irrespective of the number of automobiles actually aboard. The manifest and bills of lading covering such charter-ship movements reflect the number of autos and the weight in kilos. Because the freight is covered by timecharter hire or lumpsum FIO freight for the use of the entire vessel, the manifest and bills of lading do not reflect any specific rate or total freight, such being covered by the notation "freight prepaid" or "freight as agreed."

2. In the Europe to Pacific Coast run the volume of cargo is rarely sufficient to fully utilize either the available deadweight or cubic of the Liners in this trade. Accordingly, cubic alone is not the criterion in establishing freight rates on those Volkswagen units which are lifted by the Liners to the Pacific Coast, and the contracts of affreightment between Volkswagenwerk, A.G. and the Liner companies involved are predicated on a lumpsum freight rate per auto.

3. The practical insignificance of the actual measurement of unboxed VW autos is emphasized by the fact that the stevedoring rates for discharging the vessels chartered by Messrs. Volkswagenwerk, A.G. work out to [3] the same

*Exhibit 7*

unit-equivalent irrespective of whether it is a sedan model (1609 lbs. and 333 cu. ft) or a transporter (average 2447 lbs. and 472 cu. ft.). Obviously, the automobile manufacturer in Europe has had no control over the method of reporting to the PMA by the stevedore companies on this Coast.

4. How a commodity is "manifested" or "freighted" is not necessarily an equitable criterion on which to base a tonnage assessment. For example, the Intercoastal ocean freight rate structure is all keyed to a weight basis; accordingly, if the basis of "manifesting" were the sole key to the reporting and levying of a tonnage assessment, any automobiles in that trade would be assessed on a unit of 2000 lbs.

5. The California State wharfage on unboxed automobiles is based on a weight ton of 2000 pounds.

6. As illustrated above, application of a measurement ton assessment against unboxed automobiles would impose upon the importation of this commodity a contribution to the "mechanization and improvement fund" at a level 10 to 15 times greater than the like contribution with packaged general cargo. This distortion is further magnified by the expectation that some overall net savings may be effected through the mechanized handling of packaged general cargo, whereas at this juncture we do not visualize any practical application of mechanization to the discharge of unboxed autos.

Your Directors must surely be aware of the diminishing sales in this country of most foreign autos—with the exception of Volkswagens. The ability of our principals to maintain competitive standing with the American manufacturers of "compact cars" is largely contingent upon holding down costs of production and delivery. The threat

485a

*Exhibit 7*

alone by PMA to attempt imposition of a 21% to 31% cargo-handling levy against the importation of Volkswagen autos injects a damaging instability to the sales potential of our principals, the extent of which damages can be measured by the current volume of Volkswagen imports to this Coast (approximately 30,000 units per year) and the long-term freighting contracts to which our principals are committed.

In conclusion, we are compelled to request immediate action by the Pacific Maritime Association to remove the threat of tonnage assessment on a measurement basis against the importation of unboxed foreign automobiles. Failing timely and affirmative action by your Association, we shall have no recourse but to seek legal order to remove this overwhelming discrimination which is implicit in an attempted levy at a level 10 to 15 times greater than assessed on other general cargo. Furthermore, you may expect legal action against the Pacific Maritime Association for recovery of damages, suffered by Volkswagenwerk, A.G. and the distributors of these autos on the Pacific Coast, resulting from such restraint of trade.

Very truly yours,

WINCHESTER AGENCIES, INC.—As Agents

/s/ PETER CURTIS

Peter Curtis, Vice President

cc: Volkswagenwerk, A.G.  
Shipping Department  
Wolfsburg/Hanover, West Germany

(Exh. 9, 1)

486a

## Exhibit 9

[1] MARINE TERMINALS CORPORATION

Cable Address "Marineterm"

Contracting Stevedores & Terminal Operators

March 1, 1961

Mr. K. F. Saysette, Vice President & Treasurer  
Pacific Maritime Association  
16 California Street  
San Francisco, California

Mechanization & Modernization  
Fund Collections

Dear Mr. Saysette:

We have been informed by Winchester Agencies, Inc., agents for Messrs. Volkswagenwerk, A. G. and by Waterman Corporation of California, agents for Walleniusrederierna, that they are refusing payment of the newly adopted Mechanization and Modernization Fund based on the measurement of automobiles discharged.

Upon instructions from the principals' offices in Wolfsburg, Germany, and Stockholm, Sweden, they were advised that they feel that the placement of this assessment on a measurement basis is unjust and it increases the cost of handling by some 35%.

We have informed them that we at Marine Terminals Corporation are merely following out the instructions set forth by the Board of Directors of the Pacific Maritime Association and therefore are considered only a collection agency in this matter.

They also have instructed their agents that if our rates are renegotiated and the assessment is placed in the rate, they will continue to deduct the 27½¢ per measurement ton,

(Exh. 9, 1; Exh. 10, 1)

487a

*Exhibit 10*

We find ourselves in a very awkward position and wish to be advised of the committee's decision on how automobiles will be assessed and what stand we can take in demanding payment of this assessment.

Very truly yours,

Ellett G. Horsman,  
ELLETT G. HORSMAN,  
*Vice President.*

EGH:mb

---

**Exhibit 10**

[1] March 3, 1961

Mr. J. Paul St. Sure  
Pacific Maritime Association  
16 California Street  
San Francisco 11, California

Dear Paul:

The Committee on Work Improvement Fund Contributions Procedures has considered the communications enclosed with your letter of January 24, 1961, and similar letters subsequently forwarded to the Committee. The gist of these letters is that the Work Improvement Fund assessment, as presently constituted, is burdensome to the traffic concerned. The traffic asking special consideration is: Volkswagen and other foreign car imports, bulk rice in containers, bananas, Army conexes, and coastwise cargo including lumber. After careful consideration of each of these protests, the Committee recommends that, with the exception of Army conexes and coastwise cargo, there be no change in the present method of fund assessments.



*Exhibit 10*

The arguments advanced by the companies complaining of the assessment can be generally summarized as claiming that the assessment cost for a particular commodity is high in comparison with the longshore labor cost for that commodity. Thus, the foreign car import people point out that by basing the assessment on these vehicles on measurement tons the assessment substantially increases their labor costs. This results from the low labor content in the discharging operation for such vehicles. Similarly, the banana operators claim that bananas are nearly like bulk cargo and should not be charged a full general cargo assessment. In both instances, however, further labor saving is possible. It must also be recognized that each general cargo operator could go through its list of commodities and find some which are handled by an operation with a high labor content per ton and others with a low labor cost. The Committee feels that save for the traditional exception of bulk cargoes, there should be no special adjustment of the tonnage assessment by commodity. If the assessment rate were adjusted for one claim of this type, then consideration would have to be given to all similar claims, and the present general assessment would be in danger of being made into an assessment rate structure similar to a tariff, with all of the problems attendant thereon. For these reasons, the Committee feels that claims of this nature should be rejected. However, it also is of the view that claims based on inequities between operators who are handling the same or similar cargo in a similar manner should be explored for the possible need for adjustments to equalize the positions of such operators.

[2] In the matter of Army conexes, it is the contention of the interested parties that, because of the non-commercial cargo manifesting practices used by the military, empty conexes are assessed at the measurement ton capacity of the conex, whereas empty commercial containers owned by

*Exhibit 10*

the carriers are not manifested and not assessed. Similarly, Army conexes containing cargo are manifested and therefore presently assessed at the full measurement ton capacity of the conex instead of on the manifested measurement (or weight, as the case may be) basis of the cargo therein contained; as is the practice with commercial operators handling containers. It is the opinion of this Committee that Army conexes should be assessed in the same manner as commercial containers moving in the trade in question.

The Army also has questioned the use of measurement tons in assessing vehicles. Since commercial operators are being assessed on a measurement basis, we believe this complaint has no merit. In short, the Committee wants all military cargo assessed on the same basis as commercial cargo moving in the trade in question.

The Isbrandtsen Company request is a little less easy to categorize. Until fairly recently rice has been handled entirely in bags. Now some 60% of Bay Area rice for Puerto Rico is going in bulk in a specially-built vessel. In order to keep some of the remaining business, Isbrandtsen plans to carry rice in bulk in 10-ton containers with the containers being filled at the shipper's place of business. A freight rate based on rice in bags would be charged. They request a bulk instead of general cargo assessment on this movement. It is the view of the Committee that a container movement should be treated as a general cargo, not a bulk cargo movement, whatever the contents of the container. This operator apparently has the choice of handling this cargo under present circumstances only in bags or containers since it has withdrawn a tariff rate based on bulk carriage that it had filed with the Federal Maritime Board. Either rice in bags or containers requires the general cargo assessment. The Committee is of the view that no exception should be made in this case in order to

*Exhibit 10*

make the operator competitive with another method of operation (bulk loading). It is not the function of the assessment to equalize competition. The Committee feels that any commodity which could be handled as bulk cargo but is instead handled in a container or package must be treated as general cargo for purposes of this assessment. This is particularly true where the movement is in containers, an operation that was a key factor in causing this Fund to exist.

The matter of the coastwise trade is a particularly difficult one. The argument is that in this trade the same ton of cargo is assessed twice, once when it is loaded onto a vessel and again when it is loaded off of the vessel. It is also a very marginal business economically.

[3] The industry has traditionally recognized the problems of the coastwise industry when it has assessed the dues collected by the Association that are based on tonnage by charging cargo only once for the assessment. Though it is not entirely a logical distinction because of the double opportunity for labor saving in such an operation, it is the recommendation of the Committee that coastwise cargo be assessed in the traditional manner at a rate of one-half of the Work Improvement Fund rate for offshore and inter-coastal cargo. That is to say, a single ton of coastwise cargo would pay a *total* of  $27\frac{1}{2}\%$  Work Improvement Fund assessment, one-half at the point of loading and the other half at the point of discharge.

A minority of the Committee is of the view that a full assessment should be made on both coastwise loading and discharging. It took the view that the problems of the coastwise trade do not arise from the manner of dividing the cost of this Fund but from the economic weakness of the industry resulting from years of land carrier competition and high operating costs and that there is no logical

*Exhibit 10*

basis for excluding this traffic from paying its share of the cost of this Fund.

One of the coastwise operators that has protested the Fund contribution rate is W. R. Chamberlin and Company. They have, in addition to the double assessment problem, also called attention to the penalty rate of \$1.00 straight time charge, the so-called Class B Steam Schooner rate, arising from the use of seamen for cargo operations. We believe to the extent that that penalty rate is paid for work flexibility and not for allowing another union to perform longshore work, this is an other reason for the coastwise half-rate rule.

The Committee also voted to have transshipped cargo assessed both for the discharge from the first carrier and the loading into the vessel of the connecting carrier.

The recommendation of this Committee concerning coastwise cargo will answer, insofar as is possible, the letter from Oliver J. Olson and Company. However, Mr. Saysette has given to this Committee another letter concerning the Olson Company, in which the PMA Southern California Area Manager has pointed out that the Olson Company has a direct contract with the ILWU for their stevedoring operations, and that other companies are competitively concerned whether Olson is also paying the Work Improvement Fund assessment. This raises a basic problem resulting from the lump sum settlement made by PMA with the ILWU. It is obviously important that employers or operators dissatisfied with the assessment not be permitted to avoid the assessment by resigning. Furthermore, it is essential that non-members be required to pay a similar assessment for competitive reasons. For these reasons we must ask the Union for its assurance that the [4] same assessment will be applied to non-member users of longshore labor. The Committee also urges that an effort be made to have non-members join PMA and pay the assess-

(Exh. 10, 4; Exh. 11, 1)

492a

*Exhibit 11*

ment to PMA instead of directly to the Union since this will have the effect of reducing the assessment for all, including the new member, in view of the lump sum nature of our settlement.

For the  
COMMITTEE ON WORK IMPROVEMENT  
FUND CONTRIBUTIONS PROCEDURES  
PETER N. TEIGE,  
Chairman.

PNT:jg

---

**Exhibit 11**

[1] PACIFIC MARITIME ASSOCIATION  
Southern California Area  
750 Broad Avenue  
Wilmington, California

March 24, 1961

Mr. K. F. Saysette  
Pacific Maritime Association  
16 California Street  
San Francisco 11, California

Subject: Mechanization Assessment—  
Refusal to Pay

Dear Ken:

Captain Anthony of Associated-Banning Company called me in an extremely disturbed state this afternoon and discussed the attached correspondence with me. I indicated there was little I could do about it at this level, and suggested he supply me with copies of the letter for forwarding to you.



(Exh. 11, 1; Exh. 12, 1)

493a

*Exhibit 12*

Banning is very much concerned inasmuch as approximately \$1,500 is involved in back assessments and the status of future jobs is certainly clouded.

Could you give this your prompt attention and advise me if anything further should be done at this level.

Very truly yours,

J. D. MacEvoy,  
J. D. MacEvoy,  
Area Manager.

JDM:ae  
Attachment

---

**Exhibit 12**

[1] WATERMAN CORPORATION OF CALIFORNIA  
Steamship Agents  
Seattle - Portland - San Francisco - Los Angeles  
P. O. Box 667  
Wilmington, California

March 23, 1961

Associated Banning Co.  
P. O. Box 816  
Wilmington, Calif.

Attention: Mr. J. H. Anthony

Re: Mechanization & Modernization  
Assessments on Automobiles

Gentlemen:

Reference to your bills number 2-116, 2-117 and 2-118, covering rebilling of automobiles tonnage from a weight basis to a measurement basis are being returned herewith.

*Exhibit 12*

The position of this company, who are Agents for the Wallenius Line which carries as part of their cargo considerable numbers of automobiles is that, we complied with rules set down by the Pacific Maritime Association Bulletin No. 4 dated January 17, 1961.

Paragraph one (1) of this bulletin stated that cargo shall be reported at 27½ cents per ton as manifested. Each automobile carried on the Wallenius Line is considered as one (1) unit, and further to substantiate this in our contract with you, each automobile is considered as one unit and/or one (1) ton. Further we refer to paragraph six (6) of this same bulletin stating in part, tonnage declaration made by companies are to be the same as during the year 1959. This reporting of automobiles as one (1) unit, and/or one (1) ton was thusly reported in this manner in 1959.

Do to the above, we are requesting that you report to the Pacific Maritime Association Mechanization Modernization Fund exactly as was done in 1959.

[2] We trust that the above clarifies our position in relation to the reporting of automobile assessments.

Very truly yours,

WATERMAN CORP. OF CALIFORNIA  
AGENTS FOR WALLENIUS LINE

H. J. Murphy,  
H. J. MURPHY,  
Operating Manager.

HJM/vc

**Exhibit 13****[1] MARINE TERMINALS CORPORATION**

Cable Address "Marineterm"

Contracting Stevedores &amp; Terminal Operators

May 1, 1961

Mr. K. F. Saysette, Vice President & Treasurer  
Pacific Maritime Association,  
16 California Street  
San Francisco 11, California

*Mechanization & Improvement Fund*

Dear Mr. Saysette:

Receipt is acknowledged of your letter dated April 28th demanding payment for the Mechanization & Improvement Fund contributions on foreign cars handled by this company from the inception of the plan.

In discussing the subject on the telephone, you explained that the Pacific Maritime Association was aware of what was behind our not making certain payments into the plan, but nevertheless, you had to protect yourself by writing the letters referred to above.

Mr. Ernst has this date again confirmed that the Pacific Maritime Association requested Marine Terminals Corporation not to file a suit against our principals for non payment until such time as a collective bargaining agreement is signed by the I.L.W.U. which would obligate Marine Terminals Corporation to pay the assessment. It is our understanding that without such an agreement we would stand a good chance of losing the case and jeopardizing the entire program.

Under the circumstances, Marine Terminals Corporation agreed not to file suit providing the Pacific Maritime Asso-

(Exh. 13, 1; Exh. 14, 1)

496a

*Exhibit 14*

ciation did not press Marine Terminals Corporation for payment on the disputed portion of the Mechanization and Improvement Fund payments on foreign cars.

Please confirm that the above is your understanding of the situation.

Very truly yours,

MARINE TERMINALS CORPORATION,

C. R. Redlich,

C. R. REDLICH,

*Vice President.*

CRR:mb

---

**Exhibit 14**

[1] MARINE TERMINALS CORPORATION  
OF LOS ANGELES

CONTRACTING STEVEDORES AND TERMINAL OPERATORS

P. O. Box 1068  
Long Beach, California  
HEmlock 2-5904  
May 1, 1961

Mr. K. F. Saysette, Vice President & Treasurer  
Pacific Maritime Association  
16 California Street  
San Francisco 11, California

*Mechanization & Improvement Fund*

Dear Mr. Saysette:

Receipt is acknowledged of your letter dated April 28th demanding payment for the Mechanization & Improvement Fund contributions on foreign cars handled by this company from the inception of the plan.

*Exhibit 14*

In discussing the subject on the telephone, you explained that the Pacific Maritime Association was aware of what was behind our not making certain payments into the plan, but nevertheless, you had to protect yourself by writing the letters referred to above.

Mr. Ernst has this date again confirmed that the Pacific Maritime Association requested Marine Terminals Corporation not to file a suit against our principals for non payment until such time as a collective bargaining agreement is signed by the I. L. W. U. which would obligate Marine Terminals Corporation to pay the assessment. It is our understanding that without such an agreement we would stand a good chance of losing the case and jeopardizing the entire program.

Under the circumstances, Marine Terminals Corporation agreed not to file suit providing the Pacific Maritime Association did not press Marine Terminals Corporation for payment on the disputed portion of the Mechanization & Improvement Fund payments on foreign cars.

Please confirm that the above is your understanding of the situation.

Very truly yours,

MARINE TERMINALS CORPORATION  
(of Los Angeles)

/s/ C. R. REDLICH  
C. R. Redlich  
President

CRR;mb

cc: J. D. MacEvoy  
C. W. Cartmel



## Exhibit 20

### [1] (MINUTES OF COMMITTEE ON WORK IMPROVEMENT FUND CONTRIBUTION PROCEDURES, AUGUST 1, 1961)

A meeting of the Committee was held on August 1, 1961,  
in Room 201 of the Association Offices.

Those present were:

Committee Members:

Messrs. Peter N. Teige—American President Lines,  
Ltd.

Ian Back—Union Steamship Co. of N. Z.  
O. I. M. Porton—Holland America Line  
Hubert Brown—Pacific Far East Line, Inc.  
B. M. Frochen—States Steamship Co.  
Foster Weldon—Matson Navigation Co.

Staff Present:

Mr. K. F. Saysette.

Committee Members Absent:

Messrs. L. R. Richards—Overseas Shipping Co.  
W. B. Adams—Pope & Talbot, Inc.

The meeting convened at 10:00 A.M.

St. Sure Letter to Committee of July 17, 1961:

The Committee took up Mr. St. Sure's letter to the  
Chairman of the Committee dated July 17, 1961.

The first matter discussed was Item 3 of the letter that  
asked that the Committee investigate and make recommen-  
dations with regard to the refusal of certain members to  
pay the M & I Fund assessment. After a discussion of

*Exhibit 20*

the extent of the problem, the Committee recommended that the following action be taken:

1. That the PMA staff prepare a detailed report showing:

- (a) The name of delinquent employers;
- (b) The amount delinquent over thirty days; and
- (c) Remarks concerning the reason for delinquency.

It was urged that the report be prepared promptly so that the Committee and the Board could know precisely the extent of the delinquency problem.

[2] 2. That the Board of Directors inaugurate a new policy whereby:

(a) Amounts due the M & I Fund which have not been paid ~~after thirty~~ days from the end of the month in which they accrued shall at that time be deemed delinquent and such employers shall be charged a penalty on the amount delinquent at the rate of one per cent per month, or any portion of a month, commencing at the date of delinquency;

(b) A report showing the names of delinquent employers and the amount of delinquency would be distributed to the membership if the employer has amounts still delinquent thirty days after the date of original delinquency.

The Committee considered Item 4 of Mr. St. Sure's July 17 letter which asked the Committee's advice on the employment of certified public accountants to check tonnage declarations made in connection with the Fund assessment. Mr. Saysette reported that Price Waterhouse & Co. esti-

*Exhibit 20*

mated they could check an average employer for about \$300. The Committee agreed to recommend to the Board of Directors that Price Waterhouse & Co. conduct a spot-check of tonnage declarations by investigating the declarations of approximately fifteen employers a year, subject to holding the total expenditure for the year to \$5,000 or less. Since the assessment program is a new one, it might be well to have the spot-checks for this year made as soon as possible.

Discussion of the inquiry in Mr. St. Sure's letter concerning a request for use by a non-member of the Central Records Office was postponed to a subsequent meeting since it is involved in the larger non-member problem confronting the Committee.

**[3] Volkswagen Assessment:**

Mr. Saysette reported on the continuing complaints of contractors who have handled Volkswagen and other foreign car shipments with respect to the application of the Fund assessment to such shipments and their failure to pay assessments on same. The Committee recommended that Mr. Saysette take up with Mr. Ernst the question of whether the assessment of automobiles on a measurement basis, though freighted on a unit basis, is legally appropriate.

**MILITARY CARGO ASSESSMENTS:**

The Committee next discussed the decision it had made earlier with respect to assessments on employers handling military cargo and particularly the Committee's decision with respect to a formula for conex containers, reflected in Mr. Saysette's letter to the Commanding General, U. S. Army Transportation Terminal Command, Pacific, of June 5, 1961. The Committee recommended that the military assessment principles which it had recommended be for-

501a

*Exhibit 20*

mally approved and ratified by the Board of Directors, including the formula proposed with respect to measurement of conex cargo.

The Committee also dealt with the occasional military shipment moving over the terminals of steamship operators and recommended to Mr. Saysette that, after the above<sup>4</sup> recommended Board action on the military cargo formula has been taken, a PMA directive be issued to the U.S.-flag lines handling military cargo, explaining that conexes moving over their terminals would be assessed according to the formula described in Mr. Saysette's June 5 letter.

**[4] ADEQUACY OF PRESENT LEVEL ASSESSMENT:**

The Committee then asked Mr. Saysette to report on the adequacy of the present assessment. He stated that as of June 30 the Fund appeared to be some \$500,000 behind for the year 1961 based on tonnages handled to June 30th, but that there is usually a greater amount of cargo handled in the last months of the year and it was hoped that this \$500,000 deficit would be largely made up. After a full discussion of this subject, it was recommended that the PMA staff establish a permanent system for periodic forecasting of the adequacy of the Fund assessments. This would involve analyzing past tonnage patterns, studying past errors in tonnage predictions, checking with operators to determine their short-range future tonnage expectations and the like. In this manner the assessment for each six months' period could be more nearly appropriate to the tonnage handled in that period, thereby avoiding the discrimination that would arise by requiring substantial increases in assessments in order to make up past deficits.

**NON-MEMBER AND ASSESSMENT ESCAPE PROBLEM:**

The Committee had, at its previous meeting, considered (1) the problem of obtaining assessment support for the

*Exhibit 21*

Fund from non-members and (2) whether there are any significant users of longshore labor who are benefiting from the M & I Agreement but are not contributing to the Fund because of the present plan of assessing only tonnage ultimately loaded to or discharged from vessels.

On the first problem Mr. Saysette reported that the ILWU had informally indicated that they would require all employers not members of PMA to pay the assessment. What was not indicated was whether the payments would be credited to the PMA Fund.

[5] On the second problem the staff was requested to study the matter and report to the Committee on the extent to which longshore labor is being used that escapes assessment entirely. A quantitative estimate will enable the Committee to appraise better the seriousness of the problem. Mr. Saysette said he would also explore the details of some situations in the Northwest which had been mentioned in this connection by Mr. Brown.

The meeting adjourned at 12 Noon.

(for) PETER N. TEIGE, Chairman

---

**Exhibit 21**

[1] August 15, 1961

MEMORANDUM FOR B. H. GOODENOUGH:

**MECHANIZATION FUND**

In accordance with your request of last week, based on discussions held by the Coast Steering Committee at the Villa Hotel several weeks ago, the following represents current information on mechanization fund contributions.



*Exhibit 21**Non-Members*

Attached is copy of my letter of August 3, 1961, addressed to Mr. Bodine of the ILWU, calling his attention to the non-member problem and asking for ILWU cooperation in seeing that such companies as National Motels pay contributions to the mechanization fund in exactly the same manner as member companies. Mr. Bodine assured me verbally prior to the writing of my letter they would do everything possible to see that non-members are not placed in the position where they have a competitive advantage over member companies.

*Coastwise Lumber*

W. R. Chamberlin & Co., a member of the Association, has not been making any contributions to the mechanization fund. They state they will not make any contributions until the question of contribution by Oliver J. Olson & Co. and Sause Bros. has been determined. Oliver J. Olson and Sause are non-members and according to Mr. Bodine no arrangement has been made with these companies for a contribution to the Mechanization Fund. Conversations with representatives of Sause and W. R. Chamberlin have been to the effect that a contribution of  $13\frac{3}{4}\text{¢}$  per thousand feet of lumber loaded aboard a ship or barge, and a  $13\frac{3}{4}\text{¢}$  contribution for the discharging operation would put the coastwise lumber industry out of business. Some determination will have to be made regarding such coastwise lumber tonnages.

*Delinquencies*

Attached is a 4-page memorandum compiled by the Accounting Department concerning delinquent assessments. The memorandum, as you will note, has been broken down into delinquencies on Government Cargoes, Automobiles, and Regular Commercial Cargoes.

*Exhibit 21*

The Army in San Francisco, and the Navy in Seattle are now in the process of compiling their tonnages on which mechanization contributions may be due. The Army in San Francisco has indicated through their Contractors, commencing with the month of July contributions will be made currently and as fast as the figures can be accumulated, the contributions for the retroactive period from January 16 thru June 30 will be computed and remittance made thru the Contractors.

[2] Rothschild in Seattle informed me by phone they are just about in the position of completing an agreement with the Navy whereby the Navy will remit to the mechanization fund on a revenue ton basis. We are unable to determine the amount due from Rothschild by reason of the fact they have not submitted any tonnage information whatsoever, and we have coming from Rothschild not only mechanization assessments, but PMA dues as well on such Navy cargoes.

The question of contributions on foreign cars is one which has been under discussion for several months, particularly on account of the position taken by the Volkswagen shippers, who feel they should not pay on a measurement ton basis, but rather on a weight ton. This particular question is one which may well require the help of counsel.

Commercial cargo delinquencies apparently are confined to W. J. Jones & Son and Brady Hamilton Stevedore Co. in Portland, and Rothschild International Stevedoring Co. in Seattle. These particular companies have apparently taken the position they will not pay the Association until they themselves are reimbursed by their non-member principals. Several months sometimes elapses before we secure the contribution on such tonnages in spite of the fact we have repeatedly sent letters to such companies, and in most instances have never received a reply.

*Exhibit 21**Recommendations of the Funding Committee*

The Funding Committee met in the Association offices to discuss not only the subjects already mentioned in this memorandum, but several other items as well. They are as follows:

1) The Committee requested the names of delinquent employers and the amount of delinquencies over 30 days, as well as remarks concerning them. This information has already been furnished to the Committee.

2) It was recommended that the Board of Directors inaugurate a new policy whereby amounts due the M & I Fund which have not been paid after 30 days from the end of the month in which they accrued shall at that time be deemed delinquent and such employers shall be charged liquidating damages, including interest on the amount delinquent at the rate of 1 per cent per month, or any portion of a month, commencing at the date of delinquency.

3) The Committee recommended that a report showing the names of delinquent employers and the amount of delinquency be distributed to the membership if the employer has amounts still delinquent 30 days after the date of original delinquency.

[3] 4) The Committee recommended to the Board of Directors that Price Waterhouse & Co. conduct a spot-check of tonnage declarations by investigating the declarations of approximately 15 employers a year, subject to holding the total expenditure for the year to \$5,000 or less. Price Waterhouse & Co. had indicated they could check an average employer for about \$300. The Committee further recommended

*Exhibit 21*

that it might be well to have the spot-checks for this year made as soon as possible.

5) The Committee recommended staff establish a permanent system for periodic forecasting of the adequacy of the Fund assessments. This would involve analyzing past tonnage patterns, studying past errors in tonnage predictions, checking with operators to determine their short-range future tonnage expectations and the like. In this manner the assessment for each six months' period could be more nearly appropriate to the tonnage handled in that period, thereby avoiding the discrimination that would arise by requiring substantial increases in assessments in order to make up past deficits.

Based on contributions received or receivable for the first six months of 1961, it would appear that the Fund will be \$500,000 short of attaining its obligation by December 31, 1961; \$200,000 of this amount could be attributed to the fact contribution did not become effective until January 16, 1961, and the first 15 days of January would have to be made up. The balance does not take into consideration the fact that ordinarily shipping increases the last six months of the year as compared with the first six months. A quick check with several companies, including the Army Contractors, indicates commercial cargoes should increase at least 10 per cent during the last six months of the year as compared with the first six months; whereas, in the case of the Army, the percentage of increase will be even greater. We are writing approximately 25 American and Foreign Flag member companies on the Pacific Coast to furnish us information periodically as to what their forecasts might be as to increase or decrease in tonnage volume during a given period of time.



*Exhibit 22*

A copy of the minutes of the meeting of August 1, 1961 is also attached to this memorandum, and reports on certain other points not otherwise contained in this memorandum.

K. F. SAYETTE

KFS:IM

Attachments

cc: J. Paul St. Sure  
w/attachments

---

**Exhibit 22**

**[1] CONFIDENTIAL  
MEMORANDUM**

October 24, 1961

TO: J. Paul St. Sure  
FROM: P. Lancaster  
RE: Marine Terminals and Mechanization Fund Contributions on Volkswagens

1. The Volkswagen firm has refused to pay Mechanization Fund contributions on Volkswagens stevedored by Marine Terminals (and in the Northwest by Seattle Stevedoring and Brady-Hamilton). The Volkswagen people object to the measurement ton basis of contribution which costs \$2.76 per vehicle vs. a weight ton cost of 28¢ per vehicle and a long-shore labor cost of \$10.45 per vehicle.

2. We are informed that Marine Terminals has a private contract with Volkswagen guaranteeing payment of the tonnage contributions to Marine Terminals. In order to enforce this private contract and pay to PMA the contributions which it acknowledges as an obligation under the Mechanization Fund (now about \$35,000), Marine Terminals now proposes to (a) sue the Volkswagen people for it or (b) attempt to force payment by refusing to work the next ship unless payment is made. They tell us, how-



*Exhibit 22*

ever, that the probable consequences of suing or attempting to force payment will be:

(1) Immediate filing by Volkswagen of a petition with the Federal Maritime Board that the Mechanization Fund Agreement violates Section 15 of the Shipping Act of 1916.

We are informed that the petition has already been prepared by the Volkswagen attorneys, Graham, James and Rolph.

(2) Volkswagen may transfer its business from Marine Terminals to another member company. They may do this to save face even though such other member company may require tonnage contributions under the contract offered by it to Volkswagen.

(3) Volkswagen, who is presently prepared to do so, may establish its own stevedoring company outside the Association, either subcontracting supervision and gear from a member company or going whole hog and establishing a complete company.

[2] 3. The consequences of such actions by the Volkswagen firm would be:

(1) The Lillick office says that the petition to the Federal Maritime Board is without merit. It would help if our present in-the-works reply to the Federal Maritime Board were filed before the threatened petition were filed, but it is not essential. The prospect of a Volkswagen petition would seem to be provoking the interest of other companies, including steamship operators, who are restive under the Mechanization Agreement.

(2) The transfer of business from one member to another would, of course, be divisive within the

*Exhibit 22*

Association, and is an occurrence which should not stem from the Mechanization Agreement. However, such division is not within the ambit of the Association operations under its By-Laws.

The Association is almost certainly barred from taking any action in this matter since such would probably be an anti-trust violation.

(3) The creation of a new stevedoring firm outside the Association would leave the responsibility for setting, collecting, and policing contributions entirely to the ILWU. If such a new firm seems to develop any advantages over Association members, the barn door is open and the fat is in the fire. Some people would hold that merely being out from under the Mechanization Agreement would be an advantage in itself. The Lillick office says that imposing Mechanization Fund contributions on such an outsider has very delicate anti-trust implications, and the Association would have to be very careful of all it did in connection with such a situation. Specifically, the Association could refuse to agree to payments into the fund if they were not comparable to tonnage contributions but otherwise the Association is confined to leaving the matter in ILWU hands and must not be a party to coercing contributions.

(4) If Marine Terminals sues Volkswagen, other shippers similar to Volkswagen may withhold contributions pending the outcome of the suit. This might even include the Army, since they are still querulous about the propriety of such contributions. An open issue of Shipping Act legality might be the jumping off point for further Army resistance.

**Exhibit 25**

**[1] MARINE TERMINALS CORPORATION  
Contracting Stevedores & Terminal Operators**

November 29, 1961

Mr. Peter N. Teige  
Chairman, P. M. A. Mechanization Funding Committee  
Pacific Maritime Association  
16 California Street  
San Francisco, California

Dear Mr. Teige:

We wish to refer to the meeting of last Friday, November 14, 1961, with your committee, the agents and principals of Volkswagen and their present stevedore contractors.

During this meeting there definitely was established by your committee an attempt to relieve our association from any responsibility to the extent that they are leaving the direct employers entirely free to absorb assessments if they so desire. We hope that we conveyed to you that the assessment in question represents approximately a 33 $\frac{1}{3}$ % increase on our handling rate. There is no way that the contractor could absorb such an increase as we have benefited nothing before or since the Mechanization & Improvement Fund has been established.

The present assessed rate on automobiles is not based on practical conditions and has no comparison to other commodity assessments.

We recommend and request at your next meeting that changes in this assessment be made along the lines of Mr. Klaff's request.

Very truly yours,

ELLET G. HORSMAN,  
Vice President.

EGH;mb

511a

**Exhibit 26**

**[1] WINCHESTER AGENCIES, INC.**  
**Steamship Agents and Brokers**

November 29, 1961

Mr. Peter N. Teige  
Chairman, P.M.A. Mechanization Funding Committee  
Pacific Maritime Association  
16 California Street  
San Francisco, California

Dear Mr. Teige:

We wish to thank you and your associates on the P.M.A. Mechanization Funding Committee for making yourselves available to meet with us last Friday. It is our understanding that, in the near future, your Committee will be considering our objections to the Work Improvement Fund assessment of 27½ cents per ton on a measurement ton basis against unboxed automobiles handled at United States Pacific Coast Ports. We believe that it may be mutually helpful to have a brief recapitulation of our position in writing.

Ever since Volkswagens were first shipped to the Pacific Coast in 1954, they have been freighted on a unit basis, or on lumpsum FIO or time charter. Other than those full cargo charter vessel shipments, not only freight but also terminal services including stevedoring, have always been computed and paid at so much per unit. However, we understand that in other trades unboxed automobiles are freighted sometimes on a weight basis, sometimes on a measurement basis, but also frequently on a unit basis. And, in the past, the computation and payment of cargo dues owed to your Association in respect of unboxed automobiles has been made on all three basis: By unit, by weight and by measurement ton.

*Exhibit 26*

In January of 1961, your Committee determined that the required contributions to make up the Work Improvement Fund by P.M.A. members, including the terminal operators who handle our Volkswagens, would comprise an assessment of 27½ cents a ton on "general cargo", 27½ cents a thousand board feet on lumber and 5½ cents a ton on bulk cargo. The assessment on "general cargo" was to be computed on the basis of weight or measurement tons depending upon whether the particular cargo had been manifested as weight or measurement cargo in 1959. Thereafter, it was determined to compute the assessment on unboxed automobiles on a measurement ton basis, regardless of the fact that Volkswagens in the Europe to Pacific trade, and all unboxed autos in the Intercoastal and Pacific Coast to Hawaii trade had never been so manifested.

[2] As we have already informed you, the result of this assessment on a measurement ton basis will be to increase the discharging costs of Volkswagens approximately 22% in the case of sedans and 31% in the case of transporters. In contrast, we estimate the average increase in the discharging costs of packaged general cargo resulting from this assessment to be approximately 2.2%. The injustice of a measurement ton assessment against unboxed autos is accentuated by the fact that the man-hours necessarily employed in their handling always have been less than practically any other commodity. This situation results directly from the "unitized" nature of unboxed autos. It is our position that this disproportionate increase in the cost of discharging Volkswagens and other unboxed automobiles subjects that description of traffic to undue and unreasonable prejudice and disadvantage in violation of Section 16 (First) of the Shipping Act, 1916. Furthermore, this prejudicial assessment results from the contrary of the just and reasonable regulations and practices relating to the handling, storing and delivery of property which are required of all persons subject to the same Act by Section



*Exhibit 26*

17. In our opinion there is no question but that the terminal operators who are demanding payment of this assessment from us directly, as well as your Association, which has compelled them of necessity to this by its unjust and unreasonable regulations, are subject to Sections 16 and 17 of the Shipping Act, 1916:

It is our impression from our meeting with your Committee that at least some of its members recognize that the over-simplification of your assessment necessarily results in prejudice to certain classes of cargo. We appreciate your desire to keep the assessment as simple as possible but we must point out that regardless of the merit of such simplicity it does not provide justification for a failure to observe the just and reasonable regulations and practices required by law.

Before closing, we have two suggestions to make, viz:

1. If your Association maintains its present approach to the funding of this program, we submit that it is only equitable that unboxed autos be assessed on the basis upon which they are normally handled between factory, loading terminal, ship's hold, discharge terminal, distributor, dealer, retail buyer—namely, per unit. This is comparable to the treatment which your Association has applied in a "per thousand board feet" application to lumber. (Automobiles are factory assembled as units to assure reliability of performance and ready use in the retail market, and not to reduce transportation costs; in fact, if shipped in disassembled form, the transport cubic measurement of a Volkswagen auto would be substantially less than its assembled unit measurement.) In any case, we urge that the assessment levied against all commodities, including unboxed autos, be such as to result in approximately equal percentage of cargo-handling costs.

[3] 2. While we believe that an assessment per unit could be equitably established for unboxed automobiles as expressed above, we alternatively suggest that the assess-

*Exhibit 26*

ment on all commodities except bulk cargo be made on the basis of:

a) Fixed percentage of total cargo-handling expenses on board, alongside and in the terminal (plus fixed allowance for usage of specific cargo-handling equipment); or

b) Fixed percentage of the total manifest freight.

We shall appreciate your acquainting the other members of your Committee with the contents of this letter. We thank you for your consideration and look forward to hearing from you in due course.

Very truly yours,

WINCHESTER AGENCIES, INC.,  
PETER CURTIS

PC:mt

cc: Mr. J. Paul St. Sure, President  
Pacific Maritime Association

cc: Mr. P. Lancaster, Secretary  
P.M.A. Mechanization Funding Committee

cc: Mr. F. Klaffs, Volkswagenwerk, A.G.  
Shipping Department, Wolfsburg

cc: Graham, James & Rolph  
Attention: Mr. A. D. Calhoun, Jr.

**Exhibit 28**

[1] February 8, 1962

**M & M FUND****MEMO ON PROPOSED FIVE TO ONE MAXIMUM LIMITATION  
ON ASSESSABLE TONNAGE FOR AUTOMOBILES**

Total automobile measurement tonnage handled in 1961,  
based on actual declarations for ten months and estimated  
tonnage for two months 1,173,242 tons

@ the current assessment rate of  $24\frac{1}{2}\text{¢}$   
per ton \$287,444.00

---

Assuming nine to one to be a reasonably average cubic to weight ratio, the imposition of a five to one limitation would reduce the contributions on autos by 44.4% or \$127,625.00 leaving this amount to be made up in some other manner. If an across-the-board rate adjustment were used to recoup the deficit, an estimated 2.6% increase would be required.

**C. J. MYERS**

**Exhibit 29**

[1] February 20, 1962

MEMORANDUM FOR J. PAUL ST. SURE:

**VOLKSWAGENS**

Several days ago Curt Myers and I had a conference with Edward Ransom and Gary Terro of Lillick's office, at which time we discussed various ways of collecting monies due from contracting stevedores for handling Volkswagens by the particular contractors. The contributions I specifically refer to represent monies due the Modernization and Mechanization Fund.

Mr. Ransom summarized in very concise form the various problems we would be faced with in the event suit was instituted. It will be gathered from this memo the situation is complex, and depending upon the action taken, may involve us not only with the contracting stevedores but with the Maritime Administration.

The method which may be chosen to effectuate collection of these delinquent M & M contributions is, I believe, a policy question; consequently, the matter is being referred to you for your consideration.

I might further add that Peter Teige of the Modernization and Mechanization Committee has asked for a meeting of the committee to be held on Wednesday afternoon, February 21st, to discuss a theory which he has regarding the reduction of assessments on automobiles to a lesser amount. For your ready reference a copy of the memo which was sent to the Funding Committee dated February 8, is attached for your information.

K. F. SAYSETTE

KFS:IM

Attachment

cc: C. J. Myers

**Exhibit 31**

**[1] MEMORANDUM**

March 27, 1962

**TO:** J. Paul St. Sure and Ben Goodenough.  
**FROM:** Pres Lancaster  
**SUBJECT:** Mechanization Fund Assessments—Marine  
Terminals and Volkswagen.

It was agreed this morning by the Coast Steering Committee that:

1) In order to satisfy a previous commitment, staff should write a letter to Marine Terminals (or Volkswagen) advising them that the Funding Committee had again reconsidered the Mechanization Fund assessment on unboxed automobiles and did not recommend any change in the present assessment. Further, the Funding Committee did not expect that there would, in the near future, be any change in the over-all assessment method which would change the assessments on this class of commodity.

2) The Coast Steering Committee recommends to the PMA Board of Directors that the action of the Board of December 13, 1961, by which PMA offered legal aid and assistance to Marine Terminals in obtaining payment from Volkswagen be reviewed and clarified. The Coast Steering Committee recommends to the Board that PMA counsel assist Marine Terminals only if any action by or against Marine Terminals raises issues which jeopardize the Mechanization Plan or other interests of the industry, in which case PMA counsel is authorized to intervene and, if necessary, assume responsibility for handling that portion of the action involving such issues. Except in such circumstances, neither PMA nor its counsel is to be involved in



*Exhibit 31*

any action by Marine Terminals against Volkswagen. If PMA counsel acts in such circumstances, PMA reserves the right to institute action against Marine Terminals if Marine Terminals is itself still in default of Mechanization Fund Assessments, including those due on the Volkswagen account.

3) In light of the above, PMA advises Marine Terminals, and all other companies owing assessments on Volkswagen, that such assessments are due, and that these companies should take such action as they deem necessary to obtain payment from their principals.

It should be noted that counsel has pointed out that cumulative defaults, both on the account of companies handling Volkswagen business and on the account of companies handling Army cargo, tend to create a situation in which it can be held that the circumstances of the IRS ruling no longer govern because the "reasonable" relationship between contributions and benefits paid to beneficiaries has been distorted from one tax year to the next.

PL/ns

cc: K. F. Saysette

**Exhibit 32**

**[1] McCUTCHEN, DOYLE, BROWN & ENERSEN**  
Counselors at Law  
601 California Street  
San Francisco 8, California

December 10, 1962

DELIVER  
Marine Terminals Corporation  
261 Steuart Street  
San Francisco 5, California

*PMA Mechanization Fund Assessments*

Dear Sirs:

As requested, we are writing to provide a brief outline of the background and status of the controversy relating to the Mechanization Fund assessments on Volkswagen autos.

Effective January 1, 1961 PMA and ILWU entered into a Supplemental Agreement on Mechanization and Modernization, calling for the creation of a special fund for long-shoremen. It was left up to PMA to determine how contributions would be made to the Fund. In due course it was determined by PMA that stevedore and terminal companies should contribute to the Fund certain amounts with respect to each ton of cargo handled. It was contemplated that these assessments, as added stevedoring or terminal costs, could be added to the charges of the stevedore or terminal companies.

Whether the assessments were to be levied according to measurement tons or weight tons depended, in general, upon the basis used for calculating the ocean freight. At the outset, there was uncertainty as to whether shippers of autos would, in effect, be given an option to have assessments on a weight-ton basis by the device of having the ocean freight

*Exhibit 32*

calculated on that basis. For various reasons, it was determined that all automobiles should be assessed on a measurement-ton basis. Volkswagenwerk vigorously objected to this method [2] of assessment, contending that it discriminated against autos and resulted in a payment which was out of proportion to benefits received. After a good deal of controversy and negotiation, both before and after the Agreement went into effect, PMA decided to adhere to a uniform assessment on a measurement-ton basis.

Volkswagenwerk refused to pay the assessment on this basis, whether billed as part of the basic stevedoring charge or billed separately. It specifically refused to agree to a new commodity rate which would include the assessment. Its position was that if stevedoring services were billed on a commodity rate basis, the amount of the assessment would be deducted and only the balance paid. Because of Volkswagenwerk's adamant position, Marine Terminals has continued to bill the Mechanization Fund assessments separately. Volkswagenwerk has continued to refuse payment of these assessments.

Not only has Volkswagenwerk refused to pay the assessment, it has refused also to post any security to cover any amount of assessments which might ultimately be held to be due. Because of this refusal, PMA filed suit against Marine Terminals in the United States District Court to recover the amounts of the assessments and Marine Terminals, in turn, impleaded Volkswagenwerk as the party ultimately liable.

As expected, Volkswagenwerk answered the suit by contending that the assessments were illegal under the Shipping Act. It asked that the suit be stayed to permit proceedings before the Federal Maritime Commission to determine the legality of the assessments. As we reported to you recently, the District Court granted Volkswagenwerk's request for a stay, on condition that proceedings be com-

*Exhibit 35*

menced before the Federal Maritime Commission by December 29. The Court refused to consider our contention that the Commission has no jurisdiction.

While it is difficult to predict how long proceedings before the Commission might take, it might well require a year or more to obtain a ruling. Additional time might be required if the losing party should appeal from the Commission's decision.

Very truly yours,

McCutchen, Doyle, Brown & Enersen  
By BRYANT K. ZIMMERMAN

2 cc encl.

---

**Exhibit 35**

[1] PACIFIC MARITIME ASSOCIATION  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

January 17, 1961

To MEMBERS:

**MECHANIZATION AND MODERNIZATION FUND**

At a meeting of the Board of Directors held on Monday, January 16, 1961, on problems relating to the recently ratified agreement with the ILWU setting up a Mechanization and Modernization Fund, the following items were approved:

- 1) Contribution rate on General Cargo will be 27½¢ per ton, as manifested with 2000 pounds weight, 40 cubic feet measurement and 1000 board feet of lumber constituting a ton. This is comparable to

*Exhibit 35*

reporting presently being made by members for PMA tonnage dues purposes.

2) Contribution rate on Bulk Cargo will be 51½¢ per ton, with bulk cargo being defined as a commodity which by nature of its unsegregated mass is usually handled by shovels, scoops, buckets, forks or mechanical conveyors and is loaded or unloaded and carried without wrapper or container and received and delivered by carriers without transportation mark, or count,

3) Scrap metal, such as scrap iron, pig iron and steel shavings—51½¢ per ton when handled on an unpackaged basis by shovels, scoops, buckets, forks, magnets or mechanical conveyor *and not in containers* which are loaded or unloaded and carried without wrapper or container and without transportation mark, or count.

4) Effective date of contribution is January 16, 1961 on all vessels which have commenced loading or discharging cargoes in a particular port on and after that date. Any operation which started in a port prior to January 16, 1961 will not be affected by the Mechanization contribution.

5) Coastwise and transshipped cargoes will carry the full contribution rate for mechanization purposes.

6) Tonnage declarations by companies are to be made in exactly the same manner as manifested and reported to the Association for dues purposes during the year 1959 (excepting scrap iron and pig iron) and any changed method of manifesting from that date will not be valid for reporting tonnages covering Mechanization Fund contributions.



*Exhibit 35*

7) Declarations of tonnages will be made, as in the past, by member steamship companies and contracting stevedores reporting for non-member companies and government agencies, being made in exactly the same manner by such companies as PMA dues. Mechanization contributions are part of a labor contract, and it is essential Reports of Tonnages and a check for contributions be in the Association's hands *not later than the 20th of the month following the month in which such cargoes are handled.*

[2] 8) The Directors have agreed the Association may employ certified public accountants to check tonnage declarations made by companies to substantiate such declarations and contributions paid.

9) The Directors further agreed a committee is to be appointed to evaluate the reporting and assessment program with a report to be submitted to the Directors 30 days prior to the expiration of the six months' trial period of assessment procedures voted by the Directors and Membership.

The declaration form presently used for reporting tonnages to the Association for dues purposes will also be utilized for the Mechanization and Modernization program. Association staff is presently working on a remittance advice for payment of mechanization contributions which will utilize information on the tonnage declaration on a recapitulation basis to compute the amounts due the Mechanization Fund. This form, with instructions, should be in your hands not later than the first of February and in sufficient time to report January tonnage and pay contributions.

K. F. SAYSETTE

Vice President & Treasurer

### Exhibit 36

[1] PACIFIC MARITIME ASSOCIATION  
16 California Street  
San Francisco, Calif.

February 3, 1961

#### MEMBERS:

#### CARGO DUES—TONNAGE—AUTOMOBILES

Our letter of January 16, 1958 stated automobiles should be reported to the Association on a measurement basis to tonnage dues purposes. We indicated that if a steamship company or contracting stevedore was reporting automobiles, or any other cargo, using weight when measurement should have been used, a supplementary tonnage report should be submitted promptly to the Association adjusting such errors, together with a check to cover the additional amount of dues involved.

Since the institution of the Modernization and Improvement Fund, it has come to our attention a number of contracting stevedores and steamship companies are still reporting automobiles for tonnage dues purposes on a weight basis instead of measurement. The theory of dues and assessments is predicated on the fact member companies shall pay on exactly the same basis thereby assuring all companies each is paying its fair share of a dues or assessment program.

Any steamship company or contracting stevedore who has not been reporting and paying dues on automobiles on a measurement basis since January 1958 should immediately complete a revised tonnage declaration form indicating by vessel and date the tonnage on automobiles reported on a weight basis, the tonnage which should have been reported on a measurement basis, and the difference which is assessable at 2½ cents per ton. This statement should be com-

(Exh. 36, 1; Exh. 39, 1)

525a

*Exhibit 39*

pleted as promptly as possible and sent to the Association with a check to cover the amount of additional dues involved. Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis.

A report no doubt will have to be made to the Board of Directors regarding status of tonnage dues on automobiles in the very near future covering the period January 1958 to the present time.

K. F. SAYSETTE,  
Vice President & Treasurer

KFS:IM

---

**Exhibit 39**

[1] PACIFIC MARITIME ASSOCIATION  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

February 9, 1960

TO BOARD OF DIRECTORS:

CERTIFICATION OF 1959 TONNAGE AND AVERAGE MONTHLY  
SEAGOING PERSONNEL FOR QUARTER ENDING  
DECEMBER 31, 1959 FOR VOTING PURPOSES

1960

Article VI, Section 2 of the Association By-Laws requires the Secretary to certify to the Board of Directors the tonnage of cargo loaded and/or discharged by or for each member during the preceding calendar year. The Section also requires the Secretary to report the average number of seagoing employees employed by members of the Passenger Line Group, Coastwise Group, Alaska Group,

(Exh. 39, 1)

526a

*Exhibit 39*

Intercoastal Line Group and Offshore Group, during the preceding quarter. These employees work under collective bargaining contracts executed by the Association on behalf of members in the above groups. There is submitted for your consideration a listing of members and the tonnage and average number of seagoing employees reported by them as recorded in the financial records of the Association.

Opposite each member is listed the number of votes based on tonnage and seagoing employees as provided in the By-Laws; i.e., one vote for each member and, in addition, one vote for each full 100,000 tons and one vote for each full 100 seagoing employees.

Respectfully submitted,

PACIFIC MARITIME ASSOCIATION  
J. A. ROBERTSON  
Secretary

JAR:vs  
Attach.

(Attached to Exhibit 39)

**[1] PACIFIC MARITIME ASSOCIATION****VOTING STRENGTH**

**BASED ON 1959 TONNAGE AND AVERAGE SEAGOING PERSONNEL  
FOR THE QUARTER ENDING DECEMBER 31, 1959**

|     | Company                                | Tonnage   | Personnel | Votes |
|-----|--|-----------|-----------|-------|
|     | 1. Alaska Steamship Company            | 390,866   | 366       | 7     |
|     | 2. Alaska Teminal & Steve. Co.         | —         | —         | 1     |
|     | 3. Albin Stevedore Co.                 | 5,901     | —         | 1     |
|     | 4. Albina Dock Co.                     | —         | —         | 1     |
|     | 5. American-Hawaiian Steamship Co.     | —         | —         | 1     |
|     | 6. American Mail Line                  | 397,105   | 449       | 8     |
|     | 7. American President Lines            | 563,025   | 2,113     | 27    |
|     | 8. Anacortes Stevedoring Co., Inc.     | 2,928     | —         | 1     |
|     | 9. Associated-Banning                  | 281,070   | —         | 3     |
|     | 10. Balfour, Guthrie & Co., Ltd.       | 730,599   | —         | 8     |
|     | 11. Barber Steamship Lines, Inc.       | 36,957    | —         | 1     |
|     | 12. Bellingham Steve. Co.              | 18,851    | —         | 1     |
|     | 13. The Blue Star Line, Inc.           | 110,400   | —         | 2     |
|     | 14. Brady-Hamilton Stevedore Co.       | 1,134,189 | —         | 12    |
|     | 15. Bulk Handlers, Inc.                | —         | —         | 1     |
|     | 16. California Stevedore & Ballast Co. | 1,162,149 | —         | 13    |
|     | 17. Canadian Gulf Line, Ltd.           | 257,860   | —         | 3     |
|     | 18. W. R. Chamberlin & Co.             | —         | —         | 1     |
|     | 19. Coast Stevedore Co.                | —         | —         | 1     |
|     | 20. Coastwise Line                     | 370,030   | 46        | 4     |
|     | 21. Columbia Basin Terminals           | —         | —         | 1     |
|     | 22. Consolidated Steve. Co.            | 2,963     | —         | 1     |
| [2] | 23. Crescent Wharf & Warehouse Co.     | 391,404   | —         | 4     |
|     | 24. The East Asiatic Co., Inc.         | 126,019   | —         | 2     |
|     | 25. Encinal Terminals                  | —         | —         | 1     |
|     | 26. Everett Stevedoring Co.            | 48,598    | —         | 1     |
|     | 27. Fern-Ville Lines                   | 7,876     | —         | 1     |
|     | 28. French Line                        | 290,609   | —         | 3     |
|     | 29. Furness, Withy & Co., Ltd.         | 315,996   | —         | 4     |
|     | 30. General Stevedore & Ballast Co.    | 49,679    | —         | 1     |
|     | 31. Grace Line Inc.                    | 300,963   | 371       | 7     |
|     | 32. Griffiths & Sprague Steve. Co.     | 175,693   | —         | 2     |
|     | 33. Holland-America Line               | 184,321   | —         | 2     |



## Exhibit 39

|     | Company                             | Tonnage   | Personnel | Votes |
|-----|-------------------------------------|-----------|-----------|-------|
|     | 34. Howard Terminal                 | 200,340   | —         | 3     |
|     | 35. Humboldt Stevedore Co., Ltd.    | 47,917    | —         | 1     |
|     | 36. Independent Stevedore Co.       | 222,058   | —         | 3     |
|     | 37. Indies Terminal Co.             | —         | —         | 1     |
|     | 38. International Terminals, Inc.   | —         | —         | 1     |
|     | 39. Interocean Line                 | 284,373   | —         | 3     |
|     | 40. Interstate Carloading Co.       | —         | —         | 1     |
|     | 41. Italian Line                    | 129,660   | —         | 2     |
|     | 42. Johnson Line                    | 318,122   | —         | 4     |
|     | 43. Jones Stevedoring Co.           | 1,545,641 | —         | 16    |
|     | 44. W. J. Jones & Son, Inc.         | 1,891,103 | —         | 19    |
|     | 45. Kerr Steamship Co., Inc.        | 267,061   | —         | 3     |
|     | 46. Klaveness Line                  | 17,497    | —         | 1     |
| [3] | 47. Knutsen Line                    | 109,851   | —         | 2     |
|     | 48. Lines Service Steve. Inc.       | —         | —         | 1     |
|     | 49. Luckenbach Steamship Co., Inc.  | 916,175   | 78        | 10    |
|     | 50. M & R Services, Inc.            | —         | —         | 1     |
|     | 51. Maersk Line Agency              | —         | —         | 1     |
|     | 52. Marine Terminals Corp.          | 304,815   | —         | 4     |
|     | 53. Marine Terminals Corp. of L. A. | 402,229   | —         | 5     |
|     | 54. Matson Navigation Company       | 2,585,548 | 2,267     | 48    |
|     | 55. Matson Terminals, Inc.          | —         | —         | 1     |
|     | 56. Metropolitan Steve. Co.         | 711,503   | —         | 8     |
|     | 57. Mutual Stevedoring Co.          | —         | —         | 1     |
|     | 58. Mutual Terminals, Inc.          | —         | —         | 1     |
|     | 59. Oceanic Steamship Co.           | —         | —         | 1     |
|     | 60. Ocean Terminals                 | —         | —         | 1     |
|     | 61. Fred. Olsen Line Agency, Ltd.   | 236,340   | —         | 3     |
|     | 62. Olympia Stevedoring Co.         | 9,306     | —         | 1     |
|     | 63. Olympic-Griffiths Lines, Inc.   | 321,764   | —         | 4     |
|     | 64. Olympic Peninsula Steve. Co.    | 28,456    | —         | 1     |
|     | 65. Olympic Steamship Co., Inc.     | —         | —         | 1     |
|     | 66. Oregon Stevedoring Co., Inc.    | 129,725   | —         | 2     |
|     | 67. Outer Harbor Dock & Wharf, Inc. | 48,566    | —         | 1     |
|     | 68. Overseas Shipping Co.           | 176,173   | —         | 2     |
|     | 69. Pacific Atlantic Steamship Co.  | —         | —         | 1     |
|     | 70. Pacific Australia Direct Line   | —         | —         | 1     |
|     | 71. Pacific Far East Line, Inc.     | 811,974   | 916       | 18    |
| [4] | 72. Pacific Islands Transport Line  | 41,358    | —         | 1     |
|     | 73. Pacific Oriental Terminal       | —         | —         | 1     |
|     | 74. Pacific Orient Express Line     | 104,529   | —         | 2     |

*Exhibit 39*

|         | Company                              | Tonnage    | Personnel | Votes |
|---------|--------------------------------------|------------|-----------|-------|
| 75.     | Pacific Ports Service Co.            | —          | —         | 1     |
| 76.     | Pacific Republics Line               | 207,141    | 377       | 6     |
| 77.     | Panama Pacific Line                  | —          | —         | 1     |
| 78.     | Parr-Richmond Terminal Co.           | 197,688    | —         | 2     |
| 79.     | Pope & Talbot, Inc.                  | 422,671    | 273       | 7     |
| 80.     | Portland Stevedoring Co.             | 394,268    | —         | 3     |
| 81.     | Rothschild-International Steve. Co.  | 859,250    | —         | 9     |
| 82.     | Rothschild's Alaska Steve. Co., Inc. | 69,831     | —         | 1     |
| 83.     | Royal Mail Lines, Ltd.               | 140,373    | —         | 2     |
| 84.     | Salmon Terminals                     | —          | —         | 1     |
| 85.     | The San Francisco Steve. Co.         | 65,998     | —         | 1     |
| 86.     | Schirmer Stevedore Co., Ltd.         | 128,559    | —         | 2     |
| 87.     | Seaboard Stevedoring Corp.           | 230,786    | —         | 3     |
| 88.     | Seattle Bulk Loading Terminal, Inc.  | 144,549    | —         | 2     |
| 89.     | Seattle Stevedore Co.                | 298,627    | —         | 3     |
| 90.     | Shaffer Terminals                    | —          | —         | 1     |
| 91.     | C. F. Sharp & Co., Inc.              | —          | —         | 1     |
| 92.     | Star Terminal Co., Inc.              | —          | —         | 1     |
| 93.     | States Marine Lines                  | 445,646    | —         | 5     |
| 94.     | States Steamship Co.                 | 503,726    | 653       | 12    |
| 95.     | Tait Stevedoring Co., Inc.           | 97,046     | —         | 1     |
| 96.     | Transpacific Trans. Co.              | 498,245    | —         | 5     |
| [5] 97. | Twin Harbor Steve. & Tug Co.         | 76,246     | —         | 1     |
| 98.     | Union SS Co. of N. Z., Ltd.          | 16,355     | —         | 1     |
| 99.     | Washington Stevedoring Co.           | 25,194     | —         | 1     |
| 100.    | West Coast Steamship Co.             | —          | 177       | 2     |
| 101.    | West Coast Terminals Co. of Calif.   | 77,161     | —         | 1     |
| 102.    | Westfal-Larsen Co. Line              | 97,935     | —         | 1     |
| 103.    | Weyerhaeuser Steamship Co.           | 377,284    | 215       | 6     |
| 104.    | Willapa Harbor Steve. Co.            | 22,450     | —         | 1     |
| 105.    | Williams, Dimond & Co.               | —          | —         | 1     |
| 106.    | Yerba Buena Corp.                    | 29,853     | —         | 1     |
| 107.    | Zidell Docks, Inc.                   | 37,155     | —         | 1     |
| Total   |                                      | 24,791,172 | 8,301     | 396   |

**Exhibit 40**

**[1] PACIFIC MARITIME ASSOCIATION**  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

March 6, 1961

**TO BOARD OF DIRECTORS:**

**CERTIFICATION OF 1960 TONNAGE AND AVERAGE MONTHLY  
SEAGOING PERSONNEL FOR QUARTER ENDING DECEMBER  
31, 1960 FOR VOTING PURPOSES 1961**

Article VI, Section 2 of the Association By-Laws requires the Secretary to certify to the Board of Directors the tonnage of cargo loaded and/or discharged by or for each member during the preceding calendar year. The Section also requires the Secretary to report the average number of seagoing employees employed by members of the Passenger Line Group, Coastwise Group, Alaska Group, Intercoastal Line Group and Offshore Group, during the preceding quarter. These employees work under collective bargaining contracts executed by the Association on behalf of members in the above groups. There is submitted for your consideration a listing of members and the tonnage and average number of seagoing employees reported by them as recorded in the financial records of the Association.

Opposite each member is listed the number of votes based on tonnage and seagoing employees as provided in the By-Laws; i.e., one vote for each member and, in addition, one vote for each full 100,000 tons and one vote for each full 100 seagoing employees.

Respectfully submitted,

**PACIFIC MARITIME ASSOCIATION**  
**J. A. ROBERTSON**  
Secretary

JAR:ah  
Attachment

*Exhibit 40*

(Attached to Exhibit 40)

**[1] PACIFIC MARITIME ASSOCIATION****VOTING STRENGTH**

BASED ON 1960 TONNAGE AND AVERAGE SEAGOING PERSONNEL  
FOR THE QUARTER ENDING DECEMBER 31, 1960

|     | Company                                | Tonnage   | Personnel | Votes |
|-----|--|-----------|-----------|-------|
|     |  |           |           |       |
|     | 1. Alaska Steamship Company            | 430,946   | 352       | 8     |
|     | 2. Alaska Terminal & Steve. Co.        | —         | —         | 1     |
|     | 3. Albin Stevedore Co.                 | 8,352     | —         | 1     |
|     | 4. Albina Dock Co.                     | —         | —         | 1     |
|     | 5. American-Hawaiian SS Co.            | —         | —         | 1     |
|     | 6. American Mail Line                  | 498,293   | 423       | 9     |
|     | 7. American President Lines            | 596,065   | 2,077     | 26    |
|     | 8. Anacortes Stevedoring Co.           | 1,322     | —         | 1     |
|     | 9. Associated-Banning Co.              | 412,868   | —         | 5     |
|     | 10. Balfour, Guthrie & Co., Ltd.       | 752,100   | —         | 8     |
|     | 11. Barber Steamship Lines, Inc.       | 26,811    | —         | 1     |
|     | 12. Bellingham Steve. Co.              | 19,782    | —         | 1     |
|     | 13. The Blue Star Line, Inc.           | 127,863   | —         | 2     |
|     | 14. Brady-Hamilton Steve. Co.          | 1,316,503 | —         | 14    |
|     | 15. Bulk Handlers, Inc.                | —         | —         | 1     |
|     | 16. California Stevedore & Ballast Co. | 1,369,474 | —         | 14    |
|     | 17. Canadian Gulf Line, Ltd.           | 268,718   | —         | 3     |
|     | 18. W. R. Chamberlin & Co.             | 65,631    | 24        | 1     |
|     | 19. Coast Stevedore Co.                | —         | —         | 1     |
|     | 20. Coastwise Line                     | —         | 50        | 1     |
|     | 21. Columbia Basin Terminals           | —         | —         | 1     |
|     | 22. Consolidated Steve. Co.            | 17,119    | —         | 1     |
| [2] | 23. Crescent Wharf & Warehouse Co.     | 355,923   | —         | 4     |
|     | 24. Daido Kaiun Kaisha                 | —         | —         | 1     |
|     | 25. The East Asiatic Co., Inc.         | 112,239   | —         | 2     |
|     | 26. Encinal Terminals                  | —         | —         | 1     |
|     | 27. Everett Stevedoring Co.            | 53,126    | —         | 1     |
|     | 28. Fern-Ville Lines                   | 15,987    | —         | 1     |
|     | 29. Flota Mercante Grancolobiana, S.A. | —         | —         | 1     |
|     | 30. French Line                        | 202,368   | —         | 3     |
|     | 31. Furness, Withy & Co., Ltd.         | 312,273   | —         | 4     |
|     | 32. General Steve. & Ballast Co.       | 27,975    | —         | 1     |
|     | 33. Grace Line, Inc.                   | 284,860   | 297       | 5     |
|     | 34. Griffiths & Sprague Steve. Co.     | —         | —         | 1     |



## Exhibit 40

|     | Company                             | Tonnage   | Personnel | Votes |
|-----|-------------------------------------|-----------|-----------|-------|
|     | 35. Hamburg-Amerika Line            | —         | —         | 1     |
|     | 36. Holland-America Line            | 174,484   | —         | 2     |
|     | 37. Howard Terminal                 | 261,540   | —         | 3     |
|     | 38. Humboldt Steve. Co., Ltd.       | 55,750    | —         | 1     |
|     | 39. Iino Lines                      | —         | —         | 1     |
|     | 40. Independent Stevedore Co.       | 200,082   | —         | 3     |
|     | 41. Indies Terminal Co.             | —         | —         | 1     |
|     | 42. International Terminals, Inc.   | —         | —         | 1     |
|     | 43. Interocean Line                 | 258,960   | —         | 3     |
|     | 44. Interstate Carloading Co.       | —         | —         | 1     |
|     | 45. Italian Line                    | 154,993   | —         | 2     |
|     | 46. Johnson Line                    | 345,399   | —         | 4     |
|     | 47. Jones Stevedoring Co.           | 1,741,528 | —         | 18    |
|     | 48. W. J. Jones & Son, Inc.         | 2,676,252 | —         | 27    |
|     | 49. Kawasaki Kisen Kaisha, Ltd.     | 16,671    | —         | 1     |
|     | 50. Kerr Steamship Co., Inc.        | 266,375   | —         | 3     |
| [3] | 51. Klaveness Line                  | 29,520    | —         | 1     |
|     | 52. Knutsen Line                    | 134,039   | —         | 2     |
|     | 53. Lines Service Steve. Inc.       | —         | —         | 1     |
|     | 54. Luckenbach SS Co., Inc.         | 557,377   | 57        | 6     |
|     | 55. M. & R. Services, Inc.          | 29,400    | —         | 1     |
|     | 56. Maersk Line Agency              | 40,758    | —         | 1     |
|     | 57. Marine Terminals Corp.          | 398,326   | —         | 4     |
|     | 58. Marine Terminals Corp. of L.A.  | 607,190   | —         | 7     |
|     | 59. Matson Navigation Company       | 2,844,316 | 2138      | 50    |
|     | 60. Matson Terminals, Inc.          | —         | —         | 1     |
|     | 61. Metropolitan Steve. Co.         | 1,254,142 | —         | 13    |
|     | 62. Mitsui Steamship Co., Ltd.      | 29,361    | —         | 1     |
|     | 63. Mutual Terminals, Inc.          | —         | —         | 1     |
|     | 64. Nippon Yusen Kaisha             | —         | —         | 1     |
|     | 65. North German Lloyd              | —         | —         | 1     |
|     | 66. Oceanic Steamship Co.           | —         | —         | 1     |
|     | 67. Ocean Terminals                 | —         | —         | 1     |
|     | 68. Fred Olsen Line Agency, Ltd.    | 206,871   | —         | 3     |
|     | 69. Olympia Stevedoring Co.         | 2,223     | —         | 1     |
|     | 70. Olympic-Griffiths Lines, Inc.   | —         | —         | 1     |
|     | 71. Olympic Peninsula Steve. Co.    | 12,017    | —         | 1     |
|     | 72. Olympic Steamship Co., Inc.     | —         | 25        | 1     |
|     | 73. Oregon Stevedoring Co., Inc.    | 47,463    | —         | 1     |
|     | 74. Outer Harbor Dock & Wharf, Inc. | 13,453    | —         | 1     |



## Exhibit 40

|     | Company                                  | Tonnage    | Personnel | Votes |
|-----|--|------------|-----------|-------|
|     | 75. Overseas Shipping Co.                | 160,844    | —         | 2     |
|     | 76. Pacific Atlantic SS Co.              | —          | —         | 1     |
|     | 77. Pacific Australia Direct Line        | —          | —         | 1     |
|     | 78. Pacific Far East Line, Inc.          | 811,668    | 957       | 18    |
| [4] | 79. Pacific Islands Transport Line       | 29,106     | —         | 1     |
|     | 80. Pacific Oriental Terminal            | —          | —         | 1     |
|     | 81. Pacific Orient Express Line          | 103,559    | —         | 2     |
|     | 82. Pacific Ports Service Co.            | —          | —         | 1     |
|     | 83. Pacific Republics Line               | 222,074    | 370       | 6     |
|     | 84. Panama Pacific Line                  | —          | —         | 1     |
|     | 85. Parr-Richmond Terminal Co.           | 198,378    | —         | 2     |
|     | 86. Pope & Talbot, Inc.                  | 422,655    | 319       | 8     |
|     | 87. Portland Stevedoring Co.             | 715,461    | —         | 8     |
|     | 88. Rothschild-International Steve. Co.  | 1,329,321  | —         | 14    |
|     | 89. Rothschild's Alaska Steve. Co., Inc. | 1,724      | —         | 1     |
|     | 90. Royal Mail Lines, Ltd.               | 143,295    | —         | 2     |
|     | 91. Salmon Terminals                     | —          | —         | 1     |
|     | 92. The San Francisco Steve. Co.         | 48,420     | —         | 1     |
|     | 93. Schirmer Stevedore Co., Ltd.         | 58,052     | —         | 1     |
|     | 94. Seaboard Stevedoring Corp.           | 193,528    | —         | 2     |
|     | 95. Seattle Bulk Loading Terminal, Inc.  | 306,154    | —         | 4     |
|     | 96. Seattle Stevedore Co.                | 1,278,732  | —         | 13    |
|     | 97. Shaffer Terminals                    | —          | —         | 1     |
|     | 98. C. F. Sharp & Co., Inc.              | —          | —         | 1     |
|     | 99. Star Terminal Co., Inc.              | —          | —         | 1     |
|     | 100. States Marine Lines                 | 570,814    | —         | 6     |
|     | 101. States Steamship Co.                | 512,680    | 653       | 12    |
|     | 102. Tait Stevedoring Co., Inc.          | 95,276     | —         | 1     |
|     | 103. Transpacific Trans. Co.             | 445,683    | —         | 5     |
| [5] | 104. Twin Harbor Steve. & Tug Co.        | 94,524     | —         | 1     |
|     | 105. Union SS Co. of N.Z., Ltd.          | 17,033     | —         | 1     |
|     | 106. Washington Stevedoring Co.          | 42,006     | —         | 1     |
|     | 107. West Coast Steamship Co.            | —          | 190       | 2     |
|     | 108. West Coast Terminals Co. of Calif.  | 165,732    | —         | 2     |
|     | 109. Westfal-Larsen Co. Line             | 128,266    | —         | 2     |
|     | 110. Weyerhaeuser Steamship Co.          | 384,359    | 280       | 6     |
|     | 111. Willapa Harbor Steve. Co.           | 31,248     | —         | 1     |
|     | 112. Williams, Dimond & Co.              | —          | —         | 1     |
|     | 113. Yerba Buena Corp.                   | 33,232     | —         | 1     |
|     | 114. Zidell Docks, Inc.                  | 38,878     | —         | 1     |
|     | Total                                    | 28,217,790 | 8,212     | 438   |

**Exhibit 41**

**[1] PACIFIC MARITIME ASSOCIATION**  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

March 13, 1962

TO BOARD OF DIRECTORS.

**CERTIFICATION OF 1961 TONNAGE AND AVERAGE MONTHLY  
SEAGOING PERSONNEL FOR QUARTER ENDING  
DECEMBER 31, 1961 FOR VOTING PURPOSES  
1962**

Article VI, Section 2 of the Association By-Laws requires the Secretary to certify to the Board of Directors the tonnage of cargo loaded and/or discharged by or for each member during the preceding calendar year. The Section also requires the Secretary to report the average number of seagoing employees employed by members of the Passenger Line Group, Coastwise Group, Alaska Group, Intercoastal Line Group and Offshore Group, during the preceding quarter. These employees work under collective bargaining contracts executed by the Association on behalf of members in the above groups. There is submitted for your consideration a listing of members and the tonnage and average number of seagoing employees reported by them as recorded in the financial records of the Association.

Opposite each member is listed the number of votes based on tonnage and seagoing employees as provided in the By-Laws; i.e., one vote for each member and, in addition, one vote for each full 100,000 tons and one vote for each full 100 seagoing employees.

Respectfully submitted,

PACIFIC MARITIME ASSOCIATION  
J. A. Robertson  
Secretary

JAR:ah  
Attachment

*Exhibit 41*

(Attached to Exhibit 41)

**[1] PACIFIC MARITIME ASSOCIATION****VOTING STRENGTH**

**BASED ON 1959 TONNAGE AND AVERAGE SEAGOING PERSONNEL  
FOR THE QUARTER ENDING DECEMBER 31, 1961**

|     | Company                                | Tonnage   | Personnel | Votes |
|-----|--|-----------|-----------|-------|
|     | 1. Alaska Steamship Company            | 407,652   | 274       | 7     |
|     | 2. Alaska Terminal & Steve. Co.        | 2,065     | —         | 1     |
|     | 3. Albin Stevedore Co.                 | 53,107    | —         | 1     |
|     | 4. Albina Dock Company                 | —         | —         | 1     |
|     | 5. American Mail Line                  | 442,469   | 443       | 9     |
|     | 6. American President Lines            | 427,900   | 2,133     | 26    |
|     | 7. Anacortes Stevedoring Co.           | 3,307     | —         | 1     |
|     | 8. Associated-Banning Co.              | 649,006   | —         | 7     |
|     | 9. Balfour, Guthrie & Co., Ltd.        | 681,185   | —         | 7     |
|     | 10. Barber Steamship Lines, Inc.       | 37,162    | —         | 1     |
|     | 11. Bellingham Steve. Co.              | 45,270    | —         | 1     |
|     | 12. The Blue Star Line, Inc.           | 102,994   | —         | 2     |
|     | 13. Brady-Hamilton Steve. Co.          | 1,321,176 | —         | 14    |
|     | 14. Bulk Handlers, Inc.                | 48,967    | —         | 1     |
|     | 15. California Stevedore & Ballast Co. | 1,702,297 | —         | 18    |
|     | 16. Calmar Steamship Corp.             | 539,036   | —         | 6     |
|     | 17. Canadian Gulf Line, Ltd.           | 255,301   | —         | 3     |
|     | 18. W. R. Chamberlin & Co.             | 44,061    | 24        | 1     |
|     | 19. Coast Stevedore Co.                | 51,661    | —         | 1     |
|     | 20. Coastwise Line                     | —         | —         | 1     |
|     | 21. Consolidated Steve. Co.            | 150,979   | —         | 2     |
| [2] | 22. Crescent Wharf & Warehouse Co.     | 225,844   | —         | 3     |
|     | 23. Daido Kaiun Kaisha                 | 77,962    | —         | 1     |
|     | 24. Diablo Seaway Terminals            | 108,128   | —         | 2     |
|     | 25. The East Asiatic Co., Inc.         | 79,622    | —         | 1     |
|     | 26. Encinal Terminals                  | 14,574    | —         | 1     |
|     | 27. Everett Stevedoring Co.            | 33,950    | —         | 1     |
|     | 28. Fern-Ville Lines                   | 12,373    | —         | 1     |
|     | 29. Flota Mercante Grancolobiana, S.A. | —         | —         | 1     |
|     | 30. French Line                        | 168,643   | —         | 2     |
|     | 31. Furness, Withy & Co., Ltd.         | 244,205   | —         | 3     |
|     | 32. General Steve. & Ballast Co.       | 150,743   | —         | 2     |
|     | 33. Grace Line, Inc.                   | 289,524   | 335       | 6     |

## Exhibit 41

|     | Company                             | Tonnage   | Personnel | Votes |
|-----|-------------------------------------|-----------|-----------|-------|
|     | 34. Griffiths & Sprague Steve. Co.  | —         | —         | 1     |
|     | 35. Hamburg-Amerika Line            | —         | —         | 1     |
|     | 36. Holland-America Line            | 159,806   | —         | 2     |
|     | 37. Howard Terminal                 | 267,835   | —         | 3     |
|     | 38. Humboldt Steve. Co., Ltd.       | 49,406    | —         | 1     |
|     | 39. Iino Lines                      | 64,759    | —         | 1     |
|     | 40. Independent Stevedore Co.       | 157,088   | —         | 2     |
|     | 41. Indies Terminal Co.             | —         | —         | 1     |
|     | 42. International Terminals, Inc.   | —         | —         | 1     |
|     | 43. Interocean Line                 | 173,758   | —         | 2     |
|     | 44. Interstate Carloading Co.       | —         | —         | 1     |
|     | 45. Italian Line                    | 80,676    | —         | 1     |
|     | 46. Johnson Line                    | 354,894   | —         | 4     |
|     | 47. Jones Stevedoring Co.           | 1,412,571 | —         | 15    |
| [3] | 48. W. J. Jones & Son, Inc.         | 2,348,905 | —         | 24    |
|     | 49. Kawasaki Kisen Kaisha, Ltd.     | 189,668   | —         | 2     |
|     | 50. Kerr Steamship Co., Inc.        | 10,824    | —         | 1     |
|     | 51. Klaveness Line                  | 20,107    | —         | 1     |
|     | 52. Knutsen Line                    | 137,603   | —         | 2     |
|     | 53. Lines Service Steve. Inc.       | —         | —         | 1     |
|     | 54. Luckenbach SS Co., Inc.         | 92,124    | —         | 1     |
|     | 55. Maersk Line Agency              | 42,564    | —         | 1     |
|     | 56. Marine Terminals Corp.          | 470,856   | —         | 5     |
|     | 57. Marine Terminals Corp. of L. A. | 750,505   | —         | 8     |
|     | 58. Matson Navigation Company       | 2,801,018 | 1,788     | 46    |
|     | 59. Matson Terminals, Inc.          | —         | —         | 1     |
|     | 60. Metropolitan Steve. Co.         | 1,934,256 | —         | 20    |
|     | 61. Mitsubishi Shipping Co., Ltd.   | 19,723    | —         | 1     |
|     | 62. Mitsui Steamship Co., Ltd.      | 223,736   | —         | 3     |
|     | 63. Mutual Terminals, Inc.          | —         | —         | 1     |
|     | 64. Nippon Yusen Kaisha             | 127,304   | —         | 2     |
|     | 65. North German Lloyd              | —         | —         | 1     |
|     | 66. The Oceanic Steamship Co.       | —         | —         | 1     |
|     | 67. Ocean Terminals                 | —         | —         | 1     |
|     | 68. Fred Olsen Line Agency, Ltd.    | 198,448   | —         | 2     |
|     | 69. Olympia Stevedoring Co.         | 21,164    | —         | 1     |
|     | 70. Olympic-Griffiths Lines, Inc.   | —         | —         | 1     |
|     | 71. Olympic Peninsula Steve. Co.    | 28,656    | —         | 1     |
|     | 72. Olympic Steamship Co., Inc.     | —         | —         | 1     |

## Exhibit 41

|     | Company                                  | Tonnage | Personnel | Votes |
|-----|--|---------|-----------|-------|
|     | 73. Oregon Stevedoring Co., Inc.         | 66,476  | —         | 1     |
|     | 74. Osaka Shosen Kaisha                  | —       | —         | 1     |
| [4] | 75. Outer Harbor Dock & Wharf, Inc.      | —       | —         | 1     |
|     | 76. Overseas Shipping Co.                | 179,658 | —         | 2     |
|     | 77. Pacific Atlantic SS Co.              | —       | —         | 1     |
|     | 78. Pacific Australia Direct Line        | —       | —         | 1     |
|     | 79. Pacific Far East Line, Inc.          | 569,836 | 849       | 14    |
|     | 80. Pacific Islands Transport Line       | 35,388  | —         | 1     |
|     | 81. Pacific Oriental Terminal            | —       | —         | 1     |
|     | 82. Pacific Orient Express Line          | 109,587 | —         | 2     |
|     | 83. Pacific Ports Service Co.            | —       | —         | 1     |
|     | 84. Pacific Republics Line               | 198,185 | 317       | 5     |
|     | 85. Panama Pacific Line                  | —       | —         | 1     |
|     | 86. Parr-Richmond Terminal Co.           | 338,197 | —         | 4     |
|     | 87. Pope & Talbot, Inc.                  | 413,123 | 376       | 8     |
|     | 88. Portland Stevedoring Co.             | 684,379 | —         | 7     |
|     | 89. Rothschild-International Steve. Co.  | 945,597 | —         | 10    |
|     | 90. Rothschild's Alaska Steve. Co., Inc. | —       | —         | 1     |
|     | 91. Royal Mail Lines, Ltd.               | 132,945 | —         | 2     |
|     | 92. Salmon Terminals                     | —       | —         | 1     |
|     | 93. The San Francisco Steve. Co., Inc.   | —       | —         | 1     |
|     | 94. Schirmer Stevedore Co., Ltd.         | 11,981  | —         | 1     |
|     | 95. Scrap Loaders, Inc.                  | —       | —         | 1     |
|     | 96. Seaboard Stevedoring Corp.           | 158,416 | —         | 2     |
|     | 97. Seattle Bulk Loading Terminal, Inc.  | 260,291 | —         | 3     |
|     | 98. Seattle Stevedore Co.                | 920,484 | —         | 10    |
| [5] | 99. C. F. Sharp & Co., Inc.              | —       | —         | 1     |
|     | 100. Shinnihon Steamship Co.             | —       | —         | 1     |
|     | 101. Star Terminal Co., Inc.             | —       | —         | 1     |
|     | 102. States Marine Lines                 | 767,634 | —         | 8     |
|     | 103. States Steamship Co.                | 454,849 | 653       | 11    |
|     | 104. Stockton Bulk Terminal Co.          | —       | —         | 1     |
|     | 105. Stockton Stevedore Co.              | —       | —         | 1     |
|     | 106. Tacoma Stevedore & Terminal Co.     | —       | —         | 1     |
|     | 107. Tait Stevedoring Co., Inc.          | 74,029  | —         | 1     |
|     | 108. Transpacific Trans. Co.             | 461,541 | —         | 5     |
|     | 109. Twin Harbor Steve. & Tug Co.        | 55,036  | —         | 1     |
|     | 110. Union SS Co. of N. Z., Ltd.         | 25,310  | —         | 1     |
|     | 111. Washington Stevedoring Co.          | 31,234  | —         | 1     |
|     | 112. West Coast Steamship Co.            | —       | 161       | 2     |



**Exhibit 46**

| Company                                     | Tonnage           | Personnel    | Votes      |
|---|-------------------|--------------|------------|
| 113. West Coast Terminals Co. of California | —                 | —            | 1          |
| 114. Westfal-Larsen Co. Line                | 137,509           | —            | 2          |
| 115. Westfall Stevedore Co.                 | —                 | —            | 1          |
| 116. Weyerhaeuser Steamship Co.             | 324,560           | 152          | 5          |
| 117. Willapa Harbor Steve. Co.              | 14,397            | —            | 1          |
| 118. Williams, Dimond & Co.                 | —                 | —            | 1          |
| 119. Yerba Buena Corp.                      | 8,580             | —            | 1          |
| 120. Zidell Docks, Inc.                     | 117,048           | —            | 2          |
| <b>TOTAL</b>                                | <b>28,005,687</b> | <b>7,505</b> | <b>433</b> |

**Exhibit 46**

[1] PACIFIC MARITIME ASSOCIATION  
 16 California Street  
 Phone DOuglas 2-7973  
 San Francisco 11, Cal.

March 3, 1960

**To Members:**

For your information and guidance, we are attaching a revised up-to-date membership list of Pacific Maritime Association, which was certified to the Board of Directors at the meeting held on February 24, 1960.

We also enclose a list of the Board of Directors elected to serve for the year 1960 and their appointed alternates. Members of the Board have been duly elected in accordance with Article V of the By-Laws of this Association.

By letter of February 16, 1960, the membership was notified of the special meeting to be held on Wednesday, February 24, 1960 in lieu of the annual meeting of the members of Pacific Maritime Association, and Item No. 6

*Exhibit 46*

referred to the proposed amendments to the By-Laws, which would be voted upon at this special meeting of the membership.

Proposed amendments to Section 1, Article VII of the By-Laws were discussed. It was moved, and seconded that the proposed amendment, designated No. 1 be approved. The motion was approved by vote of members holding two-thirds of the voting power of the entire membership. The vote was as follows: 286 — yes, 110 — absent.

The proposed amendment to Section 5 of Article XI of the By-Laws was discussed. On motion that the amendment be approved, the motion was approved by vote of members holding two-thirds of the voting power of the entire membership. The vote was as follows: 279 — yes, 7 — no, 110 — absent.

These two amendments having been approved by the necessary two-thirds of the voting power of the membership now become effective and the enclosed copies are as approved by the membership of this Association.

Very truly yours,

J. A. ROBERTSON  
Secretary

JAR:vs  
Encl.

## Exhibit 46

(Attached to Exhibit 46)

## [1] PACIFIC MARITIME ASSOCIATION

## MEMBERSHIP ROSTER

| Name and Address of Member Co.   | AREA       |            |            |  |
|--|------------|------------|------------|--|
|  | Group(s) * | So. Calif. | No. Calif. | Oregon & Col. River<br>Wash-<br>ington |
| 1. Alaska Steamship Company<br>Pier 42<br>Seattle 4, Washington              | d, e       |            |            | x                                      |
| 2. Alaska Terminal & Steve.<br>Pier 42<br>Seattle 4, Washington              | g, h       |            |            | x                                      |
| 3. Albin Stevedore Company<br>3200 - 26th Ave., S. W.<br>Seattle, Washington | g          |            |            | x                                      |
| 4. Albina Dock Company<br>710 Lewis Building<br>Portland 4, Oregon           | h          |            |            | x                                      |
| 5. American-Hawaiian Steamship Co.<br>90 Broad St.<br>New York 4, N. Y.      |            |            |            |  |
| 6. American Mail Line, Ltd.<br>740 Stuart Building<br>Seattle, Washington    | e, g, h    | x          | x          | x                                      |
| 7. American President Lines<br>311 California St.<br>San Francisco, Calif.   | a, e, h    | x          | x          |  |

**[2]**

- [illegible]

## Exhibit 46

| Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|---|------------|------------|------------|---------------------|------------|
|   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 17. Canadian Gulf Line, Ltd.<br>Pier 22<br>San Francisco 5, Calif.                  | f          | x          | x          |                     |            |
| 18. W. R. Chamberlin & Co.<br>206 Portland Trust Bldg.<br>Portland 4, Oregon        | c          |            |            | x                   |            |
| 19. Coast Stevedore Co.<br>914 Water St.<br>P. O. Box 997<br>South Bend, Washington | g, h       |            |            |                     | x          |
| 20. Coastwise Line<br>141 Battery St.<br>San Francisco, Calif.                      | c, d, e    | x          | x          | x                   | x          |
| 21. Columbia Basin Terminals<br>1788 N.W. Front<br>Portland 9, Oregon               | h          |            |            | x                   |            |
| 22. Consolidated Steve. Co.<br>268 Market St.<br>San Francisco, Calif.              | g          |            | x          |                     |            |
| 23. Crescent Wharf & Warehouse Co.<br>272 South Fries Ave.<br>Wilmington, Calif.    | g, h       | x          |            |                     |            |
| 24. The East Asiatic Co., Inc.<br>465 California St.<br>San Francisco, Calif.       | f          | x          | x          | x                   | x          |



**Exhibit 46**

- |     |  |         |       |
|-----|--|---------|-------|
| 25. | Encinal Terminals<br>P. O. Drawer A<br>Alameda, Calif.   | h       | x     |
| 26. | Everett Stevedoring Co.<br>1006 Hewitt Ave.<br>Everett, Washington                             | g       |       |
| 27. | Fern-Ville Lines<br>(Overseas Shipping Co., Agts.)<br>310 Sansome St.<br>San Francisco, Calif. | f       | x x   |
| 28. | French Line<br>(General SS Corp., Agts.)<br>432 California St.<br>San Francisco, Calif.        | f       | x x x |
| 29. | Furness, Withy & Co., Ltd.<br>310 Sansome St.<br>San Francisco, Calif.                         | f       | x x x |
| 30. | General Stevedore & Ballast Co.<br>224 Spear St.<br>San Francisco, Calif.                      | g       | x     |
| 31. | Grace Line Inc.<br>2 Pine St.<br>San Francisco, Calif.   | e, g, h | x x   |
| 32. | Griffiths & Sprague Stevedoring Co.<br>Pier 50<br>Seattle 4, Washington                        | g       | x     |

## Exhibit 46

|         | Name and Address of Member Co.   | Group(s) * | AREA       |            |                     |            |
|---------|--|------------|------------|------------|---------------------|------------|
|         |  |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 33.     | Holland-America Line<br>324 Sansome St.<br>San Francisco, Calif.                                 | f          | x          | x          | x                   | x          |
| [4] 34. | Howard Terminal<br>95 Market St.<br>Oakland 4, Calif.  | g, h       |            | x          |                     |            |
| 35.     | Humboldt Stevedore Co. Ltd.<br>Foot of Washington St.<br>Eureka, Calif.                          | g          |            | x          |                     |            |
| 36.     | Independent Stevedore Co.<br>210 N. Broadway, Box 1019<br>Coo's Bay, Oregon                      | g          |            |            | x                   |            |
| 37.     | Indies Terminal Co.<br>P. O. Box 1147<br>Wilmington, Calif.                                      | h          | x          | x          |                     |            |
| 38.     | International Terminals Inc.<br>812 Wilshire Blvd.<br>Los Angeles, Calif.                        | h          | x          |            |                     |            |
| 39.     | Interocean Line<br>(Westfal Larsen Co., Inc., Agts.)<br>310 Sansome St.<br>San Francisco, Calif. | -f         | x          | x          | x                   | x          |
| 40.     | Interstate Carloading Co.<br>1214 N. W. Front Ave.<br>Portland 9, Oregon                         | h          |            |            | x                   |            |

545a

## Exhibit 46

|  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| 41. Italian Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif. | f | x | x | x | x | x |
| 42. Johnson Line<br>(Grace Line Inc., Gen. Agts.)<br>2 Pine St.<br>San Francisco, Calif.           | f | x | x | x | x | x |
| 43. Jones Stevedoring Co.<br>311 California St.<br>San Francisco, Calif.                           | g | x | x |   |   |   |
| 44. W. J. Jones & Son, Inc.<br>817 Board of Trade Bldg.<br>Portland, Oregon                        | g |   | x |   |   |   |
| 45. Kerr Steamship Co., Inc.<br>350 California St.<br>San Francisco 4, Calif.                      | f | x | x | x | x | x |
| 46. Klaveness Line<br>(Overseas Shipping Co., Agts.)<br>310 Sansome St.<br>San Francisco, Calif.   | f | x | x | x | x | x |
| 47. Knutsen Line<br>(Bakke Steamship Corp., Agts.)<br>311 California St.<br>San Francisco, Calif.  | f | x | x | x | x | x |
| 48. Lines Service Stevedoring, Inc.<br>819-A Alabama<br>San Francisco, Calif.                      | g |   |   | x |   |   |

[5]

## Exhibit 46

|     | Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|-----|---|------------|------------|------------|---------------------|------------|
|     |   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 49. | Luckenbach Steamship Co., Inc.<br>100 Bush St.<br>San Francisco, Calif.                               | b          | x          | x          | x                   | x          |
| 50. | M & R Services, Inc.<br>P. O. Box 112<br>Pittsburg, Calif.  | g, h       |            | x          |                     |            |
| 51. | Maersk Line Agency<br>510 West Sixth St.<br>Los Angeles, Calif.                                       | f          | x          |            |                     |            |
| 52. | Marine Terminals Corp.<br>261 Steuart St.<br>San Francisco, Calif.                                    | g, h       | x          | x          |                     |            |
| 53. | Marine Terminals Corp.<br>of Los Angeles<br>298 So. Pico Ave.<br>P. O. Box 1068<br>Long Beach, Calif. | g, h       | x          |            |                     |            |
| 54. | Matson Navigation Co.<br>215 Market St.<br>San Francisco, Calif.                                      | a, e       | x          | x          | x                   | x          |
| 55. | Matson Terminals, Inc.<br>215 Market St.<br>San Francisco, Calif.                                     | g, h       | x          | x          | x                   | x          |

547a

## Exhibit 46

|   |      |   |   |  |   |  |   |   |
|---|------|---|---|--|---|--|---|---|
| 56. Metropolitan Steve. Co.<br>211 Marine Ave.<br>P. O. Box 547<br>Wilmington, Calif. | g    | x |   |  |   |  |   |   |
| [6] 57. Mutual Stevedoring Co.<br>289 Steuart St.<br>San Francisco 5, Calif.          | g, h |   | x |  |   |  |   |   |
| 58. Mutual Terminals, Inc.<br>289 Steuart St.<br>San Francisco 5, Calif.              | g, h |   | x |  |   |  |   |   |
| 59. Oceanic Steamship Co.<br>215 Market St.<br>San Francisco, Calif.                  | a, e | x | x |  | x |  |   | x |
| 60. Ocean Terminals<br>55 Sacramento St.<br>San Francisco 4, Calif.                   | h    | x |   |  | x |  |   |   |
| 61. Fred. Olsen Line Agency Ltd.<br>465 California St.<br>San Francisco, Calif.       | f    | x |   |  | x |  |   | x |
| 62. Olympia Stevedoring Co.<br>P. O. Box 192<br>Olympia, Washington                   | g    |   |   |  |   |  |   | x |
| 63. Olympic-Griffiths Lines, Inc.<br>1000 - 2nd Ave.<br>Seattle 4, Washington         | c    | x |   |  |   |  | x | x |
| 64. Olympic Peninsula Steve.<br>2247 East Marginal Way<br>Seattle 4, Washington       | g    |   |   |  |   |  |   | x |



## Exhibit 46

| AREA    |  | Group(s) * | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
|---------|--|------------|------------|------------|---------------------|------------|
|         |  |            |            |            |                     |            |
| 65.     | Olympic Steamship Co., Inc.<br>1000 - 2nd Ave.<br>Seattle 4, Washington  | e, g, h    | x          | x          | x                   | x          |
| 66.     | Oregon Stevedoring Co., Inc.<br>3630 N. W. Front Ave.<br>Portland 10, Oregon                                     | g          |            |            | x                   |            |
| 67.     | Outer Harbor Dock & Wharf, Inc.<br>272 South Fries Ave.<br>Wilmington, Calif.                                    | g, h       | x          |            |                     |            |
| 68.     | Overseas Shipping Co.<br>310 Sansome St.<br>San Francisco, Calif.  | f, h       | x          | x          | x                   | x          |
| [7] 69. | Pacific Atlantic Steamship Co.<br>320 California St.<br>San Francisco, Calif.                                    | b, e       | x          | x          | x                   | x          |
| 70.     | Pacific Australia Direct Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif.  | f          | x          | x          | x                   | x          |
| 71.     | Pacific Far East Line, Inc.<br>141 Battery St.<br>San Francisco, Calif.  | e          | x          | x          | x                   | x          |
| 72.     | Pacific Island Transport Lines<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif. | f          | x          | x          | x                   | x          |

549a

*Exhibit 46*

|   |         |   |   |   |   |
|---|---------|---|---|---|---|
| 73. Pacific Oriental Terminal<br>351 California St.<br>San Francisco, Calif.                                      | h       | x |   |   |   |
| 74. Pacific Orient Express Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif. | f       | x | x | x | x |
| 75. Pacific Ports Service Co.<br>2 Pine St.<br>San Francisco 11, Calif.   | h       | x | x |   |   |
| 76. Pacific Republics Line:<br>(Moore-McCormack Lines, Inc.)<br>214 California St.<br>San Francisco, Calif.       | e       | x | x | x | x |
| 77. Panama Pacific Line<br>141 Battery St.<br>San Francisco, Calif.   | h       | x |   |   |   |
| 78. Parr-Richmond Terminal Co.<br>1 Drumm St.<br>San Francisco, Calif.  | g, h    | x |   |   |   |
| 79. Pope & Talbot, Inc.<br>100 Bush St.<br>San Francisco 4, Calif.  | b, g, h | x | x | x | x |
| 80. Portland Stevedoring Co.<br>1320 S. W. Broadway<br>Portland, Oregon   | g       |   |   | x |   |

550a

## Exhibit 46

|     | Name and Address of Member Co.   | AREA |   |   |  | Group(s) * | So. Calif. | No. Calif. | Oregon & Col. River | Washingt. |
|-----|--|------|---|---|--|------------|------------|------------|---------------------|-----------|
|     |  |      |   |   |  |            |            |            |                     |           |
| 81. | Rothschild-International Stevedoring Co.<br>2247 East Marginal Way<br>Seattle 4, Washington  | g    |   |   |  |            |            |            |                     | x         |
| 82. | Rothschild's Alaska Stevedoring Co., Inc.<br>2247 East Marginal Way<br>Seattle 4, Washington | g    |   |   |  |            |            |            |                     | x         |
| 83. | Royal Mail Lines, Ltd.<br>1731 Exchange Bldg.<br>Seattle 4, Washington                       | f    | x | x |  |            |            |            | x                   |           |
| 84. | Salmon Terminals<br>Pier 24 North<br>Seattle 4, Washington                                   | h    |   |   |  |            |            |            |                     | x         |
| 85. | The San Francisco Steve. Co.<br>35 Brannan St.<br>San Francisco, Calif.                      | g    |   |   |  |            |            | x          |                     |           |
| 86. | Schirmer Steve. Co., Ltd.<br>55 Sacramento St.<br>San Francisco, Calif.                      | g    |   |   |  |            |            | x          |                     |           |
| 87. | Seaboard Steve. Corp.<br>2 Pine 'St.<br>San Francisco, Calif.                                | g    |   |   |  |            | x          | x          |                     |           |



## Exhibit 46

|           | Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|-----------|---|------------|------------|------------|---------------------|------------|
|           |   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 97.       | Twin Harbor Stevedoring & Tug. Co.<br>P. O. Box 716<br>Hoquiam, Washington                                | g          |            |            |                     | x          |
| 98.       | Union SS Co. of N. Z. Ltd.<br>230 California St.<br>San Francisco, Calif.                                 | f          | x          | x          | x                   | x          |
| 99.       | Washington Stevedoring Co.<br>36 West Stacy St.<br>Seattle 4; Washington                                  | g          |            |            |                     | x          |
| 100.      | West Coast Steamship Co.<br>601 Board of Trade Bldg.<br>Portland 4, Oregon                                | e          |            |            | x                   |            |
| 101.      | West Coast Terminals Co.<br>of California<br>P. O. Box 2310, Station B<br>San Francisco, Calif.           | g, h       | x          | x          |                     |            |
| 102.      | Westfal-Larsen Co. Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif. | f          | x          | x          | x                   | x          |
| 103.      | Weyehaeuser Steamship Co.<br>141 Battery St.<br>San Francisco, Calif.                                     | b          | x          | x          | x                   | x          |
| [10] 104. | Willapa Harbor Steve. Co.<br>Raymond, Washington  | g          |            |            |                     | x          |



553a

## Exhibit 46

|   |      |   |   |   |   |
|---|------|---|---|---|---|
| 105. Williams, Dimond & Co.<br>530 W. 6th St.<br>Los Angeles, Calif.  | f, h | x | x | x | x |
| 106. Yerba Buena Corp.<br>55 Sacramento St.<br>San Francisco, Calif.  | g, h | x |   |   |   |
| 107. Zidell Docks, Inc.<br>3121 S. W. Moody St.<br>Portland 1, Oregon | g    |   |   |   | x |

## Groups(s) •

- |                            |                       |
|----------------------------|-----------------------|
| a. Passenger Line Group    | e. Offshore Group     |
| b. Intercoastal Line Group | f. Foreign Line Group |
| c. Coastwise Group         | g. Stevedore Group    |
| d. Alaska Group            | h. Terminal Group     |

## MEMBERSHIP ROSTER FOR 1960

(Exh. 47, 1)

554a

**Exhibit 47**

**[1] PACIFIC MARITIME ASSOCIATION**  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

July 3, 1961

**To MEMBERS.**

For your information and guidance, we are attaching a Membership Roster of Pacific Maritime Association which was certified to the Board of Directors at the annual meeting held on March 9, 1961.

It would be appreciated if each member would check his listing to see if it is correct and current, both as to membership groupings and areas of operation. Also, please advise if we have listed your address incorrectly.

Also enclosed is listing of the members of the Board of Directors and their appointed alternates who are serving for the year 1961.

J. A. ROBERTSON,  
Secretary.

JAR:ah  
Enclosures

555a

*Exhibit 47*

(Attached to Exhibit 47)

[1] PACIFIC MARITIME ASSOCIATION  
16 California Street  
Phone DOUGLAS 2-7973  
San Francisco 11, Cal.

June 30, 1961

ERRATA SHEET

PACIFIC MARITIME ASSOCIATION

MEMBERSHIP ROSTER

Name & Address of Member Co.

- |                                |   |
|--------------------------------|---|
| 5. American Hawaiian<br>SS Co. | <i>Delete.</i>  |
| 55. M & R Services, Inc.       | <i>Change in Name:</i><br><i>From: M &amp; R Services, Inc.</i><br><i>To: Diablo Seaway<br/>Terminals</i>                     |
| 97. Seattle Stevedore Co.      | <i>Change of Address:</i><br><i>From: 1200 Westlake Ave. N.</i><br><i>To: 2900 - 11th Ave. S.W.<br/>Seattle 4, Washington</i> |

## Exhibit 47

| Name and Address of Member Co.  | Group(s) * | AREA          |               |                        |                 |
|---|------------|---------------|---------------|------------------------|-----------------|
|   |            | So.<br>Calif. | No.<br>Calif. | Oregon &<br>Col. River | Wash-<br>ington |
| [1] PACIFIC MARITIME ASSOCIATION  |            |               |               |                        |                 |
| MEMBERSHIP ROSTER   |            |               |               |                        |                 |
| 1. Alaska Steamship Company<br>Pier 42<br>Seattle 4, Washington                   | d, e       |               |               |                        | x               |
| 2. Alaska Terminal & Stevedore<br>Pier 42<br>Seattle 4, Washington                | g, h       |               |               |                        | x               |
| 3. Albin Stevedore Company<br>3200 - 26th Ave., S.W.<br>Seattle, Washington       | g          |               |               |                        | x               |
| 4. Albina Dock Company<br>710 Lewis Building<br>Portland 4, Oregon                | h          |               |               | x                      |                 |
| 5. American-Hawaiian SS Co.<br>360 Lexington Avenue<br>New York 17, N. Y.         |            |               |               |                        |                 |
| 6. American Mail Line, Ltd.<br>1010 Washington Bldg.<br>Seattle, Washington       | e, g, h    | x             | x             | x                      | x               |
| 7. American President Lines<br>311 California Street<br>San Francisco, California | a, e, h    | x             | x             |                        |                 |

557a

## Exhibit 47

8. Anacortes Stevedoring Co.  
320 Commercial Ave.  
Anacortes, Washington
9. Associated-Banning Co.  
P. O. Box 816  
Wilmington, Calif.
10. Balfour, Guthrie & Co., Ltd.  
255 California Street  
San Francisco, Calif.
11. Barber Steamship Lines, Inc.  
(Overseas Shipping Co., Agts.)  
310 Sansome Street  
San Francisco, Calif.
- [2] 12. Bellingham Stevedoring Co.  
802 State St.  
Bellingham, Washington
13. The Blue-Star Line, Inc.  
1801 Northern Life Tower  
Seattle 1, Washington
14. Brady-Hamilton Stevedore Co.  
1725 N. W. 14th Ave.  
Portland 9, Oregon
15. Bulk Handlers, Inc.  
Pier 32  
San Francisco, Calif.
16. California Stevedore & Ballast Co.  
160 Folsom St.  
San Francisco, Calif.

g

g, h

f

f

g

f

g

g

g, h



## Exhibit 47

| Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|---|------------|------------|------------|---------------------|------------|
|   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 17. Calmar Steamship Corporation<br>25 Broadway<br>New York 4, N. Y.                | b          | x          | x          | x                   | x          |
| 18. Canadian Gulf Line, Ltd.<br>Pier 22<br>San Francisco 5, Calif.                  | f          | x          | x          |                     |            |
| 19. W. R. Chamberlin & Co.<br>206 Portland Trust Bldg.<br>Portland 4, Oregon        | c          |            |            | x                   |            |
| 20. Coast Stevedore Co.<br>214 Water St.<br>P. O. Box 997<br>South Bend, Washington | g, h       |            |            |                     | x          |
| 21. Coastwise Line<br>141 Battery St.<br>San Francisco, Calif.                      | c, d, e    | x          | x          | x                   |            |
| 22. Columbia Basin Terminals<br>1788 N. W. Front<br>Portland 9, Oregon              | h          |            |            | x                   |            |
| 23. Consolidated Steve. Co.<br>268 Market St.<br>San Francisco, Calif.              | g          |            | x          |                     |            |
| 24. Crescent Wharf & Warehouse Co.<br>272 South Fries Ave.<br>Wilmington, Calif.    | g, h       | x          |            |                     |            |

559a

## Exhibit 47

- |  |      |   |   |   |   |   |   |
|--|------|---|---|---|---|---|---|
| [3] 25. Daido Kaun Kaisha<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif.                    | f    | x | x | x | x | x | x |
| 26. The East Asiatic Co., Inc.<br>465 California St.<br>San Francisco, Calif.  | f    | x | x | x | x | x | x |
| 27. Encinal Terminals<br>P. O. Drawer A<br>Alameda, Calif.   | g, h | x |   |   |   |   |   |
| 28. Everett Stevedoring Co.<br>1006 Hewitt Ave.<br>Everett, Washington   | g    |   |   |   |   |   | x |
| 29. Fern-Ville Lines<br>(Overseas Shipping Co., Agts.)<br>310 Sansome St.<br>San Francisco, Calif.                             | f    | x | x | x | x | x | x |
| 30. Flota Mercante Grancolobiana, S.A.<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California St.<br>San Francisco, Calif. | f    | x | x | x | x | x | x |
| 31. French Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif.                              | f    | x | x | x | x | x | x |
| 32. Furness, Withy & Co., Ltd.<br>310 Sansome St.<br>San Francisco, Calif.   | f    | x | x | x | x | x | x |

## Exhibit 47

| Name and Address of Member Co.   | Group(s) * | AREA       |            |                     |            |
|--|------------|------------|------------|---------------------|------------|
|  |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 33. General Stevedore & Ballast Co.<br>224 Spear St.<br>San Francisco, Calif.                                    | g          |            | x          |                     |            |
| 34. Grace Line, Inc.<br>2 Pine St.<br>San Francisco, Calif.  | e, g, h    | x          | x          | x                   | x          |
| 35. Griffiths & Sprague Stevedoring Co.<br>Pier 50<br>Seattle 4, Washington                                      |            |            |            |                     |            |
| 36. Hamburg-America Line<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California St.<br>San Francisco, Calif. | f          | x          | x          | x                   | x          |
| [4] 37. Holland-America Line<br>324 Sansome St.<br>San Francisco, Calif.   | f          | x          | x          | x                   | x          |
| 38. Howard Terminal<br>95 Market St.<br>Oakland 4, Calif.  | g, h       |            | x          |                     |            |
| 39. Humboldt Stevedore Co., Ltd.<br>Foot of Washington St.<br>Eureka, Calif.                                     | g          |            | x          |                     |            |
| 40. Ino Lines<br>(Bakke Steamship Corp., Agts.)<br>311 California St.<br>San Francisco 4, Calif.                 | f          | x          | x          | x                   | x          |

41. Independent Stevedore Co.  
210 N. Broadway, Box 1019  
Coos Bay, Oregon
42. Indies Terminal Co.  
P. O. Box 1147  
Wilmington, Calif.
43. International Terminals, Inc.  
812 Wilshire Blvd.  
Los Angeles, Calif.
44. Interocean Line  
(Westfal Larsen Co., Inc., Agts.)  
310 Sansome St.  
San Francisco, Calif.
45. Interstate Carloading Co.  
1214 N. W. Front Ave.  
Portland 9, Oregon
46. Italian Line  
(General SS Corp., Ltd., Agts.)  
432 California St.  
San Francisco, Calif.
47. Johnson Line  
(Grace Line, Inc., Gen. Agts.)  
2 Pine St.  
San Francisco, Calif.
48. Jones Stevedoring Co.  
311 California St.  
San Francisco, Calif.

## Exhibit 47

|         | Name and Address of Member Co.  | AREA       |            |                     |            | Group(s) * |  |
|---------|---|------------|------------|---------------------|------------|------------|--|
|         |   | So. Calif. | No. Calif. | Oregon & Col. River | Washington |            |  |
| 49.     | W. J. Jones & Son, Inc.<br>817 Board of Trade Bldg.<br>Portland, Oregon                                       |            |            | x                   |            | g          |  |
| [5] 50. | Kawasaki Kisen Kaisha, Ltd.<br>(Kerr SS Co., Inc., Gen. Agts.)<br>350 California St.<br>San Francisco, Calif. | x          | x          | x                   | x          | f          |  |
| 51.     | Kerr Steamship Co., Inc.<br>350 California St.<br>San Francisco 4, Calif.                                     | x          | x          | x                   | x          | f          |  |
| 52.     | Klaveness Line<br>(Overseas Shipping Co., Agts.)<br>310 Sansome St.<br>San Francisco, Calif.                  | x          | x          | x                   | x          | f          |  |
| 53.     | Knutson Line<br>(Bakke Steamship Corp., Agts.)<br>311 California St.<br>San Francisco, Calif.                 | x          | x          | x                   | x          | f          |  |
| 54.     | Lines Service Stevedoring<br>819-A Alabama<br>San Francisco, Calif.   |            | x          |                     |            | g          |  |
| 55.     | M & R Services, Inc.<br>P. O. Box 112<br>Pittsburg, Calif.  |            | x          |                     |            | g, h       |  |



56. Maersk Line Agency  
510 West Sixth St.  
Los Angeles, Calif.
57. Marine Terminals Corp.  
261 Steuart St.  
San Francisco, Calif.
58. Marine Terminals Corp.  
of Los Angeles  
298 So. Pico Ave.  
P. O. Box 1068  
Long Beach, Calif.
59. Matson Navigation Company  
215 Market St.  
San Francisco, Calif.
60. Matson Terminals, Inc.  
480 Main St.  
San Francisco, Calif.
61. Metropolitan Steve. Co.  
211 Marine Avenue  
P. O. Box 547  
Wilmington, Calif.
62. Mitsubishi Shipping Co., Ltd.  
(Oceanic Agencies, Inc., Gen.  
310 Sansome St.  
San Francisco, Calif.
63. Mitsui Steamship Co., Ltd.  
(Mitsui Line Agencies, Inc.)  
201 Pine St.  
San Francisco 4, Calif.

[9]

## Exhibit 47

|     | Name and Address of Member Co.   | Group(s) * | AREA          |               |                        |   | Wash-<br>ington |
|-----|--|------------|---------------|---------------|------------------------|---|-----------------|
|     |  |            | So.<br>Calif. | No.<br>Calif. | Oregon &<br>Col. River |   |                 |
| 64. | Mutual Terminals, Inc.<br>289 Steuart St.<br>San Francisco 5, Calif.                                       | g, h       |               | x             |                        | x |                 |
| 65. | Nippon Yusen Kaisha<br>311 California St.<br>San Francisco, Calif.   | f          | x             |               | x                      |   | x               |
| 66. | North German Lloyd<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California St.<br>San Francisco, Calif. | f          | x             |               | x                      |   | x               |
| 67. | Oceanic Steamship Co.<br>215 Market St.<br>San Francisco, Calif.   | a, e       | x             |               | x                      |   | x               |
| 68. | Ocean Terminals<br>55 Sacramento St.<br>San Francisco 4, Calif.  | h          | x             |               |                        |   |                 |
| 69. | Fred Olsen Line Agency, Ltd.<br>465 California St.<br>San Francisco, Calif.                                | f          | x             |               | x                      |   | x               |
| 70. | Olympia Stevedoring Co.<br>P.O. Box 192<br>Olympia, Washington   | g          |               |               |                        |   | x               |
| 71. | Olympic-Griffiths Lines, Inc.<br>1000 - 2nd Ave.<br>Seattle 4, Washington                                  | c          | x             |               | x                      |   | x               |

**Exhibit 47**

- [illegible]

## Exhibit 47

|         | Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|---------|---|------------|------------|------------|---------------------|------------|
|         |   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 81.     | Pacific Oriental Terminal<br>351 California St.<br>San Francisco, Calif.                                      | h          |            | x          |                     |            |
| 82.     | Pacific Orient Express Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif. | f          | x          | x          | x                   | x          |
| 83.     | Pacific Ports Service Co.<br>2 Pine St.<br>San Francisco 11; Calif.   | h          | x          | x          |                     |            |
| 84.     | Pacific Republics Line<br>(Moore-McCormick Lines, Inc.)<br>214 California St.<br>San Francisco, Calif.        | e          | x          | x          | x                   | x          |
| 85.     | Panama Pacific Line<br>141 Battery St.<br>San Francisco, Calif.   | h          | x          |            |                     |            |
| [8] 86. | Parr-Richmond Terminal<br>1 Drumm St.<br>San Francisco, Calif.  | g, h       |            | x          |                     |            |
| 87.     | Pope & Talbot, Inc.<br>100 Bush St.<br>San Francisco 4, Calif.  | h, g, h    | x          | x          | x                   | x          |

**Exhibit 47**

- |     |   |   |   |   |
|-----|---|---|---|---|
| 88. | Portland Stevedoring Co.<br>1320 S. W. Broadway<br>Portland, Oregon                             | g |   | x |
| 89. | Rothschild-International<br>Stevedoring Co.<br>2247 East Marginal Way<br>Seattle 4, Washington  | g |   | x |
| 90. | Rothschild's Alaska Stevedoring<br>Co., Inc.<br>2247 East Marginal Way<br>Seattle 4, Washington | g |   | x |
| 91. | Royal Mail Lines, Ltd.<br>1731 Exchange Bldg.<br>Seattle 4, Washington                          | f | x | x |
| 92. | Salmon Terminals<br>Pier 24 North<br>Seattle 4, Washington                                      | h |   | x |
| 93. | The San Francisco Steve. Company<br>35 Brannan St.<br>San Francisco, Calif.                     | g | x |   |
| 94. | Schirmer Steve. Co., Ltd.<br>55 Sacramento St.<br>San Francisco, Calif.                         | g | x |   |
| 95. | Seaboard Steve. Corp.<br>2 Pine St.<br>San Francisco, Calif.                                    | g | x | x |



## Exhibit 47

|      | Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|------|---|------------|------------|------------|---------------------|------------|
|      |   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 96.  | Seattle Bulk Loading Terminal, Inc.<br>Pier 50, Room 28<br>Seattle, Washington  | g, h       |            |            |                     | x          |
| 97.  | Seattle Stevedore Co.<br>1200 Westlake Ave., N.<br>Seattle 9, Washington  | g, h       |            |            |                     | x          |
| [9]  | Shaffer Terminals<br>P. O. Box 1157<br>Tacoma, Washington   | h          |            |            |                     | x          |
| 99.  | C. F. Sharp & Co., Inc.<br>Central Tower<br>703 Market St.<br>San Francisco, Calif.                                   | f          | x          | x          |                     |            |
| 100. | Shinnihon Steamship Co., Ltd.<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California St.<br>San Francisco, Calif. | f          | x          | x          | x                   | x          |
| 101. | Star Terminal Co., Inc.<br>Pier 22<br>San Francisco, Calif.   | h          | x          | x          |                     |            |
| 102. | States Marine Lines<br>241 Sansome St.<br>San Francisco, Calif.   | h, e       | x          | x          | x                   | x          |

569a

## Exhibit 47

|  |      |   |   |   |   |                |
|--|------|---|---|---|---|----------------|
| 103. States Steamship Co.<br>320 California St.<br>San Francisco, Calif.                                       | e, h | x | x | x | x | x              |
| 104. Tait Stevedoring Co., Inc.<br>2247, East Marginal Way<br>Seattle 4, Washington                            | g    |   |   |   |   | x              |
| 105. Transpacific Trans. Co.<br>351 California St.<br>San Francisco, Calif.                                    | f    | x | x | x | x | x              |
| 106. Twin Harbor Stevedoring & Tug Co.<br>P. O. Box 716<br>Hoquiam, Washington                                 | g    |   |   |   |   | x              |
| 107. Union SS Co. of N. Z., Ltd.<br>230 California St.<br>San Francisco, Calif.                                | f    | x | x | x | x | x              |
| 108. Washington Stevedoring Co.<br>36 West Stacy St.<br>Seattle 4, Washington                                  | g    |   |   |   |   | x              |
| [10] 109. West Coast Steamship Co.<br>601 Board of Trade Bldg.<br>Portland 4, Oregon                           | e    |   |   |   | x |                |
| 110. West Coast Terminals Co.<br>of California<br>P. O. Box 2310, Station B<br>San Francisco, Calif.           | g, h | x |   |   | x |                |
| 111. Westfal-Larsen Co. Line<br>(General SS Corp., Ltd., Agts.)<br>432 California St.<br>San Francisco, Calif. | f    | x |   |   | x | x <sub>5</sub> |

## Exhibit 47

| Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |            |
|---|------------|------------|------------|---------------------|------------|
|   |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| 112. Weyerhaeuser Steamship Company<br>141 Battery St.<br>San Francisco, Calif. | b          | x          | x          | x                   | x          |
| 113. Willapa Harbor Steve. Co.<br>Raymond, Washington                           | g          |            |            |                     | x          |
| 114. Williams, Dimond & Co.<br>530 W. 6th St.<br>Los Angeles, Calif.            | f, h       | x          | x          | x                   | x          |
| 115. Yerba Buena Corp.<br>55 Sacramento St.<br>San Francisco, Calif.            | g, h       |            | x          |                     |            |
| 116. Zidell Docks, Inc.<br>3121 S. W. Moody St.<br>Portland 1, Oregon           | g          |            |            | x                   |            |

## Group(s) \*

- a. Passenger Line Group
- b. Intercoastal Line Group
- c. Coastwise Group
- d. Alaska Group
- e. Offshore Group
- f. Foreign Line Group
- g. Stevedore Group
- h. Terminal Group

MEMBERSHIP ROSTER FOR 1961

# Exhibit 48

## [1] PACIFIC MARITIME ASSOCIATION

16 California Street

Phone Douglas 2-7973

San Francisco 11, Cal.

April 25, 1962

## ERRATA SHEET

## PACIFIC MARITIME ASSOCIATION

## MEMBERSHIP ROSTER

571a

| Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |
|---|------------|------------|------------|---------------------|
|   |            | So. Calif. | No. Calif. | Oregon & Col. River |
| Capitol Stevedore Co.<br>2900 - 11th Ave., SW<br>Seattle 4, Washington      | g          |            |            | Wash-<br>ington     |
| Crown-Zellerbach Corporation<br>1 Bush Street<br>San Francisco, California  | h          |            |            |                     |
| Twin Harbors Terminal Company<br>Pier C, Berth 20<br>Long Beach, California | h          |            |            |                     |

Name and Address of Member Co.

Capitol Stevedore Co.  
2900 - 11th Ave., SW  
Seattle 4, Washington

Crown-Zellerbach Corporation  
1 Bush Street  
San Francisco, California

Twin Harbors Terminal Company  
Pier C, Berth 20  
Long Beach, California

(The above companies were admitted to membership in the Association since the Membership Roster was prepared.)

(Exh. 48, 1)

## Exhibit 48

## [1] PACIFIC MARITIME ASSOCIATION

## MEMBERSHIP ROSTER

| Name and Address of Member Co.  | Group(s) * | AREA          |               |                        |                 |
|---|------------|---------------|---------------|------------------------|-----------------|
|   |            | So.<br>Calif. | No.<br>Calif. | Oregon &<br>Col. River | Wash-<br>ington |
| 1. Alaska Steamship Company.<br>Pier 42<br>Seattle 4, Washington                  | d, e       |               |               |                        | x               |
| 2. Alaska Terminal & Steve.<br>Pier 42<br>Seattle 4, Washington                   | g, h       |               |               |                        | x               |
| 3. Albin Stevedore Company<br>3200 - 26th Ave. S.W.<br>Seattle, Washington        | g          |               |               |                        | x               |
| 4. Albina Dock Company.<br>710 Lewis Building<br>Portland 4, Oregon               | h          |               |               | x                      |                 |
| 5. American Mail Line, Ltd.<br>1010 Washington Bldg.<br>Seattle, Washington       | e, g, h    | x             | x             | x                      | x               |
| 6. American President Lines<br>601 California Street<br>San Francisco, California | a, e, h    | x             | x             |                        |                 |
| 7. Anacortes Stevedoring Co.<br>320 Commercial Ave.<br>Anacortes, Washington      | g          |               |               |                        | x               |



573a

## Exhibit 48

|   |      |   |   |   |
|---|------|---|---|---|
| 8. Associated Banning Co.<br>P. O. Box 816<br>Wilmington, Calif.  | g, h | x | x |   |
| 9. Balfour, Guthrie & Co., Ltd.<br>255 California Street<br>San Francisco, California                                 | f    | x | x | x |
| 10. Barber Steamship Lines, Inc.<br>(Overseas Shipping Co., Agts.)<br>310 Sansome Street<br>San Francisco, California | f    | x | x |   |
| 11. Bellingham Stevedoring Co.<br>802 State Street<br>Bellingham, Washington  | g    |   |   | x |
| 12. The Blue Star Line, Inc.<br>1801 Northern Life Tower<br>Seattle 1, Washington                                     | f    | x | x | x |
| [2] 13. Brady-Hamilton Stevedore Co.<br>1725 N. W. 14th Ave.<br>Portland 9, Oregon                                    | g    |   | x |   |
| 14. Bulk Handlers, Inc.<br>Pier 32<br>San Francisco, California   | g    |   | x |   |
| 15. California Stevedore & Ballast Co.<br>160 Folsom Street<br>San Francisco, California                              | g, h |   | x |   |
| 16. Calmar Steamship Corp.<br>25 Broadway<br>New York 4, N. Y.  | b    | x | x | x |

## Exhibit 48

| Name and Address of Member Co.  | AREA     |            |            |                                  |
|---|----------|------------|------------|----------------------------------|
|   | Group(s) | So. Calif. | No. Calif. | Oregon & Col. River Wash- ington |
| 17. Canadian Gulf Line, Ltd.<br>Pier 22<br>San Francisco 5, Calif.  | f        | x          | x          |                                  |
| 18. W. R. Chamberlin & Co.<br>206 Portland Trust Bldg.<br>Portland 4, Oregon                                | c        |            |            | x                                |
| 19. Coast Stevedore Co.<br>914 Water Street<br>P. O. Box 997<br>South Bend, Washington                      | g, h     |            |            | x                                |
| 20. Coastwise Line<br>601 Montgomery Street<br>San Francisco, Calif.  | c, d, e  | x          | x          | x                                |
| 21. Consolidated Steve. Co.<br>268 Market Street<br>San Francisco, Calif.                                   | g        |            | x          |                                  |
| 22. Crescent Wharf & Warehouse Co.<br>272 South Fries Avenue<br>Wilmington, Calif.                          | g, h     | x          |            |                                  |
| 23. Daido Kaiun Kaisha<br>(General SS Corp., Ltd., Agts.)<br>432 California Street<br>San Francisco, Calif. | f        | x          | x          | x                                |

**Exhibit 48**[illegible]

## Exhibit 48

|         | Name and Address of Member Co.  | AREA       |            |            |                     |              |
|---------|---|------------|------------|------------|---------------------|--------------|
|         |   | Group(s) * | So. Calif. | No. Calif. | Oregon & Col. River | Wash- ington |
| 32.     | General Stevedore & Ballast Co.<br>Pier 9<br>San Francisco, Calif.  | g          |            | x          |                     |              |
| 33.     | Grace Line, Inc.<br>2 Pine Street<br>San Francisco, Calif.  | e, g, h    | x          | x          | x                   | x            |
| 34.     | Griffiths & Sprague Stevedoring Co.<br>Pier 50<br>Seattle 4, Washington   | g          |            |            |                     | x            |
| 35.     | Hamburg-America Line<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California Street<br>San Francisco, Calif. | f          | x          | x          | x                   | x            |
| [4] 36. | Holland-America Line<br>324 Sansome Street<br>San Francisco, Calif.   | f          | x          | x          | x                   | x            |
| 37.     | Howard Terminal<br>95 Market Street<br>Oakland 4, Calif.  | g, h       |            | x          |                     |              |
| 38.     | Humboldt Stevedore Co., Ltd.<br>Foot of Washington Street<br>Eureka, Calif.                                     | g          |            | x          |                     |              |
| 39.     | Ino Lines<br>(Bakke Steamship Corp., Agts.)<br>311 California Street<br>San Francisco 4, Calif.                 | f          | x          | x          | x                   | x            |

577a

## Exhibit 48

40. Independent Stevedore Co.  
210 N. Broadway, Box 1019  
Coos Bay, Oregon
41. Indies Terminal Co.  
P. O. Box 1147  
Wilmington, Calif.
42. International Terminals, Inc.  
812 Wilshire Blvd.  
Los Angeles, Calif.
43. Interocean Line  
(Westfal Larsen Co., Inc., Agts.)  
310 Sansome Street  
San Francisco, Calif.
44. Interstate Carloading Co.  
3838 N.W. Front Ave.  
Portland 10, Oregon
45. Italian Line  
(General SS Corp., Ltd., Agts.)  
432 California Street  
San Francisco, Calif.
46. Johnson Line  
(Grace Line, Inc., Gen. Agts.)  
2 Pine Street  
San Francisco, Calif.
47. Jones Stevedoring Co.  
211 Brannan Street  
San Francisco 7, Calif.

x

x

x

x

x

x

x

x

x

x

x

x

x

x

x

x

x

x

x



## Exhibit 48

| [5] | Name and Address of Member Co.   | Group(s) * | AREA          |               |                        |   | Wash-<br>ington |
|-----|--|------------|---------------|---------------|------------------------|---|-----------------|
|     |  |            | So.<br>Calif. | No.<br>Calif. | Oregon &<br>Col. River |   |                 |
| 48. | W. J. Jones & Son, Inc.<br>817 Board of Trade Bldg.<br>Portland, Oregon  | g          |               |               | x                      |   |                 |
| 49. | Kawasaki Kisen Kaisha, Ltd.<br>(Kerr Steamship Company, Inc.,<br>General Agents)<br>350 California Street<br>San Francisco, Calif. | f          | x             | x             | x                      | x |                 |
| 50. | Kerr Steamship Co., Inc.<br>350 California Street<br>San Francisco 4, Calif.   | f          | x             | x             | x                      | x |                 |
| 51. | Klaveness Line<br>(Overseas Shipping Co., Agts.)<br>310 Sansome Street<br>San Francisco, Calif.                                    | f          | x             | x             | x                      | x |                 |
| 52. | Knutsen Line<br>(Bakke Steamship Corp., Agts.)<br>311 California Street<br>San Francisco, Calif.                                   | f          | x             | x             | x                      | x |                 |
| 53. | Lines Service Stevedoring<br>819-A Alabama<br>San Francisco, Calif.  | g          |               | x             |                        |   |                 |
| 54. | Luckenbach Steamship Co.<br>120 Wall Street<br>New York 5, N. Y.   |            |               |               |                        |   |                 |

579a

## Exhibit 48

|  |      |   |   |   |  |  |  |  |   |
|--|------|---|---|---|--|--|--|--|---|
| 55. Maersk Line Agency<br>615 South Flower St.<br>Los Angeles 17, California   | f    | x |   |   |  |  |  |  |   |
| 56. Marine Terminals Corp.<br>261 Steuart Street<br>San Francisco, Calif.  | g, h | x |   |   |  |  |  |  |   |
| 57. Marine Terminals Corp.<br>of Los Angeles<br>298 So. Pico Ave.<br>P. O. Box 1068<br>Long Beach, Calif.                | g, h | x |   |   |  |  |  |  |   |
| 58. Matson Navigation Company<br>215 Market Street<br>San Francisco, Calif.  | a, e | x | x | x |  |  |  |  | x |
| 59. Matson Terminals, Inc.<br>480 Main Street<br>San Francisco, Calif.   | g, h | x | x | x |  |  |  |  | x |
| 60. Metropolitan Steve. Co.<br>211 Marine Avenue<br>P. O. Box 547<br>Wilmington, Calif.                                  | g    | x |   |   |  |  |  |  |   |
| 61. Mitsubishi Shipping Co., Ltd.<br>(Oceanic Agencies, Inc., Gen. Agts.)<br>310 Sansome Street<br>San Francisco, Calif. | f    | x | x | x |  |  |  |  | x |
| 62. Mitsui Steamship Co., Ltd.<br>(Mitsui Line Agencies, Inc.)<br>201 Pine Street<br>San Francisco 4, Calif.             | f    | x | x | x |  |  |  |  | x |

## Exhibit 48

|     | Name and Address of Member Co.  | Group(s)* | AREA          |               |                        |   | Wash-<br>ingt |
|-----|---|-----------|---------------|---------------|------------------------|---|---------------|
|     |   |           | So.<br>Calif. | No.<br>Calif. | Oregon &<br>Col. River |   |               |
| 63. | Mutual Terminals, Inc.<br>289 Steuart Street<br>San Francisco, Calif.   | g, h      |               | x             |                        |   |               |
| 64. | Nippon Yusen Kaisha<br>311 California Street<br>San Francisco, Calif.   | f         | x             | x             | x                      | x |               |
| 65. | North German Lloyd<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California Street<br>San Francisco, Calif. | f         | x             | x             | x                      | x |               |
| 66. | The Oceanic Steamship Co.<br>215 Market Street<br>San Francisco, Calif.                                       | a, e      | x             | x             | x                      | x |               |
| 67. | Ocean Terminals<br>55 Sacramento Street<br>San Francisco 4, Calif.  | h         | x             | x             |                        |   |               |
| 68. | Fred Olsen Line Agency, Ltd.<br>465 California Street<br>San Francisco, Calif.                                | f         | x             | x             | x                      | x |               |
| 69. | Olympia Stevedoring Co.<br>P. O. Box 192<br>Olympia, Washington   | g         |               |               |                        | x |               |
| 70. | Olympic-Griffiths Lines, Inc.<br>1000 - 2nd Avenue<br>Seattle 4, Washington                                   | c         | x             | x             | x                      | x |               |

581a

## Exhibit 48

|  |         |   |   |   |   |   |
|--|---------|---|---|---|---|---|
| 71. Olympic Peninsula Steve.<br>2247 East Marginal Way<br>Seattle 4, Washington  | g       |   |   |   |   | x |
| [7] 72. Olympic Steamship Co., Inc.<br>1000 - 2nd Avenue<br>Seattle 4, Washington                                      | e, g, h | x | x | x | x | x |
| 73. Oregon Steve. Co., Inc.<br>3630 N. W. Front Avenue<br>Portland 10, Oregon  | g       |   |   |   | x |   |
| 74. Osaka Shosen Kaisha<br>(Williams, Dimond & Co., Agents)<br>530 West 6th Street<br>Los Angeles 14, Calif.           | f       | x | x | x | x | x |
| 75. Outer Harbor Dock & Wharf, Inc.<br>272 South Fries Avenue<br>Wilmington, Calif.                                    | g, h    | x |   |   |   |   |
| 76. Overseas Shipping Co.<br>310 Sansome Street<br>San Francisco, Calif.   | f, h    | x | x | x | x | x |
| 77. Pacific Atlantic Steamship<br>320 California Street<br>San Francisco, Calif.                                       | b, e    | x | x | x | x | x |
| 78. Pacific Australia Direct Line<br>(General SS Corp., Ltd., Agts.)<br>432 California Street<br>San Francisco, Calif. | f       | x | x | x | x | x |
| 79. Pacific Far East Line, Inc.<br>141 Battery Street<br>San Francisco, Calif.   | e       | x | x | x | x | x |

|         | Name and Address of Member Co.  | Group(s) * | AREA       |            |                     |              |
|---------|---|------------|------------|------------|---------------------|--------------|
|         |   |            | So. Calif. | No. Calif. | Oregon & Col. River | Wash- ington |
| 80.     | Pacific Islands Transport Line<br>(General SS Corp., Ltd., Agts.)<br>432 California Street<br>San Francisco, Calif. | f          | x          | x          | x                   | x            |
| 81.     | Pacific Oriental Terminal<br>351 California Street<br>San Francisco, Calif.   | h          |            | x          |                     |              |
| 82.     | Pacific Orient Express Line<br>(General SS Corp., Ltd., Agts.)<br>432 California Street<br>San Francisco, Calif.    | f          | x          | x          | x                   | x            |
| 83.     | Pacific Ports Service Co.<br>2 Pine Street<br>San Francisco 11, Calif.  | h          | x          | x          |                     |              |
| [8] 84. | Pacific Republics Line<br>(Moore-McCormack Lines, Inc )<br>214 California Street<br>San Francisco, Calif.           | e          | x          | x          | x                   | x            |
| 85.     | Panama Pacific Line<br>141 Battery Street<br>San Francisco, Calif.  | h          | x          |            |                     |              |
| 86.     | Parr-Richmond Terminals<br>1 Drumm Street<br>San Francisco, Calif.  | g, h       |            | x          |                     |              |



583a

## Exhibit 48

87. Pope & Talbot, Inc.  
100 Bush Street  
San Francisco, Calif.
88. Portland Stevedoring Co.  
1320 S. W. Broadway  
Portland, Oregon
89. Rothschild-International  
Stevedoring Co.  
2247 East Marginal Way  
Seattle 4, Washington
90. Rothschild's Alaska  
Stevedoring Co., Inc.  
2247 East Marginal Way  
Seattle 4, Washington
91. Royal Mail Lines, Ltd.  
1731 Exchange Bldg.  
Seattle 4, Washington
92. Salmon Terminals  
Pier 24 North  
Seattle 4, Washington
93. The San Francisco Stevedoring Co., Inc.  
35 Brannan Street  
San Francisco 7, Calif.
94. Schirmer Stevedoring Co., Ltd.  
55 Sacramento Street  
San Francisco, Calif.
95. Scrap Loaders, Inc.  
3200 N. W. Yeon Avenue  
Portland 10, Oregon

b, g, h

g

g

g

f

h

g

g

g

## Exhibit 48

|         | Name and Address of Member Co.   | Group(s) * | AREA       |            |                     |            |
|---------|--|------------|------------|------------|---------------------|------------|
|         |  |            | So. Calif. | No. Calif. | Oregon & Col. River | Washington |
| [9] 96. | Seaboard Stevedoring Corp.<br>2 Pine Street<br>San Francisco, Calif.   | g          | x          | x          |                     |            |
| 97.     | Seattle Bulk Loading Terminal, Inc.<br>Pier 48<br>Seattle, Washington  | g, h       |            |            |                     | x          |
| 98.     | Seattle Stevedore Co.<br>2900 - 11th Avenue, S.W.<br>Seattle 4, Washington   | g, h       |            |            |                     | x          |
| 99.     | C. F. Sharp & Co., Inc.<br>Central Tower<br>703 Market Street<br>San Francisco, Calif.                                   | f          | x          | x          |                     |            |
| 100.    | Shinnihon Steamship Co., Ltd.<br>(Balfour, Guthrie & Co., Ltd., Agts.)<br>255 California Street<br>San Francisco, Calif. | f          | x          | x          | x                   | x          |
| 101.    | Star Terminal Co., Inc.<br>Pier 22<br>San Francisco, Calif.  | h          | x          | x          |                     |            |
| 102.    | States Marine Lines<br>241 Sansome Street<br>San Francisco, Calif.   | b, e       | x          | x          | x                   | x          |

## Exhibit 48

103. States Steamship Company  
320 California Street  
San Francisco, Calif. e, h
104. Stockton Bulk Terminal Co.  
of California  
141 Battery Street  
San Francisco, Calif. g
105. Stockton Stevedoring Co.  
P. O. Box 1793  
Stockton, Calif. g
106. Tacoma Stevedore & Terminal Co.  
P. O. Box 1157  
Tacoma, Washington g, h
107. Tait Stevedoring Co., Inc.  
2247 East Marginal Way  
Seattle 4, Washington g
108. Transpacific Trans. Co.  
351 California Street  
San Francisco, Calif. f
109. Twin Harbor Stevedoring & Tug Co.  
P. O. Box 716  
Hoquiam, Washington g
110. Union SS Co. of N. Z., Ltd.  
230 California Street  
San Francisco, Calif. f
111. Washington Stevedoring Co.  
36 West Stacy Street  
Seattle 4, Washington g

## Exhibit 48

| Name and Address of Member Co.  | AREA       |            |            |                     |
|---|------------|------------|------------|---------------------|
|   | Group(s) * | So. Calif. | No. Calif. | Oregon & Col. River |
| 112. West Coast Steamship Co.<br>601 Board of Trade Bldg.<br>Portland 4, Oregon                                   | e          |            |            | x                   |
| 113. West Coast Terminals Co.<br>of California<br>311 California Street<br>San Francisco, Calif.                  | g, h       | x          | x          |                     |
| 114. Westfal-Larsen Co. Line<br>(General SS Corp., Ltd., Agts.)<br>432 California Street<br>San Francisco, Calif. | f          | x          | x          | x                   |
| 115. Westfall Stevedore Co.<br>Foot of Washington Street<br>P. O. Box 770<br>Eureka, Calif.                       | g          |            | x          |                     |
| 116. Weyerhaeuser Steamship Co.<br>141 Battery Street<br>San Francisco, Calif.                                    | b          | x          | x          | x                   |
| 117. Willapa Harbor Steve. Co.<br>Raymond, Washington   | g          |            |            | x                   |
| 118. Williams, Dimond & Co.<br>530 W. 6th Street<br>Los Angeles, Calif.   | f, h       | x          | x          | x                   |



587a

*Exhibit 48*

[11] 119. Yerba Buena Corporation  
55 Sacramento Street  
San Francisco, Calif.

x

g, h

~~120.~~ Zidell Docks, Inc.  
3121 S. W. Moody Street  
Portland 1, Oregon

x

g

Group(s)

- |                          |                       |
|--------------------------|-----------------------|
| a. Passenger Line Group  | e. Offshore Group     |
| b. Interoctal Line Group | f. Foreign Line Group |
| c. Coastwise Group       | g. Stevedore Group    |
| d. Alaska Group          | h. Terminal Group     |

MEMBERSHIP ROSTER FOR 1962



**Exhibit 55**

**[1] PACIFIC MARITIME ASSOCIATION**  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

March 16, 1961

**MEMBERS:**

**REVISED PAYMENT PROCEDURES**

**ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND**

On advice of counsel, a revision in payment procedures to the Association for Modernization and Improvement Fund purposes is required. Internal Revenue regulations provide that any contributions made for the benefit of employees for fringe benefits have to be made by the employers of such employees in order to guarantee deductibility of contributions. This concept was confirmed at a conference held by Association counsel with officials of the Internal Revenue Service in Washington, D. C. a short while ago.

In order to meet Internal Revenue requirements, it is necessary to modify the reporting and paying procedures of member companies to the Association for ILWU-PMA Modernization and Improvement Fund purposes, as follows:

1) Member Steamship Companies will report on the Association Declaration of Tonnage form, all tonnage handled during the preceding calendar month, broken down on a port basis, in the same manner as outlined in our letter of 2/3/61. This tonnage declaration form should be in the hands of the Association not later than the 20th of the month to cover tonnage handled during the preceding calendar month, which is in accordance with Association By-Law provisions.

2) The member steamship company will complete a Form MI-102 (sample of which is attached to this letter)

589a

*Exhibit 55*

for each contracting stevedore loading or discharging cargoes for the member steamship company during the month in which such cargoes were handled. Two copies of Form MI-102 should be sent to the contracting stevedore involved in order that he may make payment of the contribution to the Association. Distribution of the form by the member steamship company will be as follows:

a) The green copy will be sent to the contracting stevedore, who will, in turn, transmit same to the Association together with a check to cover the amount of contribution due.

b) The yellow copy will be retained by the contracting stevedore for his file.

c) The white copy will be sent to the Association by the member steamship company with the regular monthly tonnage report.

d) The pink copy will also be sent to the Association, along with the white copy.

e) The blue copy is to be retained by the member steamship company for their file.

f) Separate advices should be completed for coastwise cargoes which are now assessable at half the regular rate for loading and half for discharging.

[2] 3) Form MI-102 made by member steamship companies to cover cargoes handled by each of their contractors on the Pacific Coast should equal the number of tons reported by the member steamship principal to the Association.

4) The contracting stevedore, immediately upon receipt of Form MI-102 from the steamship principal, will send to the Association the green copy together with a check payable to Pacific Maritime Association

*Exhibit 55*

to cover the amount of Modernization and Improvement Fund contribution. If a check is not received from the contracting stevedore within ten (10) days from the time the Association and the contracting stevedore receive copies of form MI-102, the steamship company will be advised of such non-payment. The Board of Directors request that steamship principals advance to their contractors sufficient monies with the remittance advice in order that the contractors may make payments promptly to the Association.

5) Association tonnage dues will be remitted directly to the Association by the steamship principal when submitting tonnage declaration form to the Association.

6) Contracting Stevedores reporting tonnages handled for account of non-member steamship companies will use exactly the same procedure enumerated in our letter of 2/3/61. The contracting stevedore should not include member companies' tonnages in stevedore cargo dues report as this would result in a duplication of tonnages already declared by the member steamship principal.

Association experience has been that during recent weeks some companies have submitted tonnage reports but have failed to make contribution to the Modernization and Improvement Fund in accordance with instructions issued by the Association on 2/3/61. We again wish to reiterate the fact that this contribution is a contractual commitment, exactly the same as welfare, pension and vacation contributions, and should be paid into the Association not later than the 20th of the month following the month in which such tonnages were handled. This is in accordance with action taken by the Board of Directors on January 16, 1961.

591a

*Exhibit 55*

Prompt reporting of tonnage and payment of contributions is essential in order that Association staff and Directors may have up-to-date information to determine whether the contribution rate is adequate to meet our \$5 million commitment during the year 1961. Information from tonnage declarations will also be needed in connection with other aspects of our agreement with the ILWU of October 18, 1960. Your cooperation, therefore, in submitting reports and making payments promptly will be appreciated.

The foregoing procedures were approved by the Board of Directors on March 9, 1961.

K. F. SAYSETTE,  
*Vice President & Treasurer.*

KFS:IM

Attachment



*Exhibit 55*

**[1] MONTHLY REPORT OF ASSESSABLE TONNAGE  
ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND**

For month of ....., 19....

**FOLLOWING IS ALL TONNAGE HANDLED DURING THE MONTH INDICATED BY  
..... FOR OUR ACCOUNT AND THE CONTRIBUTION**

**Contracting Stevedore  
DUE THEREON TO THE ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND:**

|                                   | <b>Tons</b> | <b>Rate</b>  | <b>Amount</b> |
|-----------------------------------|-------------|--------------|---------------|
| GENERAL CARGO, LUMBER and LOGS .. | _____       | _____        | _____         |
| BULK DRY CARGO .....              | _____       | _____        | _____         |
|                                   |             | <b>TOTAL</b> | <b>=====</b>  |

**TOTAL TONNAGES SHOWN ABOVE ARE AS REPORTED TO THE PACIFIC MARITIME ASSOCIATION FOR CARGO DUES PURPOSES ON THE MONTHLY REPORT OF TONNAGE AND ARE UNDERSTOOD TO BE SUBJECT TO SUCH INDEPENDENT AUDIT PROCEDURES AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE PACIFIC MARITIME ASSOCIATION.**

|                             |             |
|-----------------------------|-------------|
| _____                       |             |
| <b>Company</b>              |             |
| _____                       | _____       |
| <b>Authorized Signature</b> | <b>Date</b> |

**INSTRUCTIONS TO MEMBER SHIPPING  
COMPANIES AND AGENTS**

1. Prepare one Form MI-102 for each contracting stevedore. Total tons on all Forms MI-102 should agree with total tons on monthly report of tonnage for cargo dues.
2. Attach white and pink copies of this form to the monthly report of tonnage when submitting the latter to P.M.A. Do not remit the modernization and improvement fund assessment to P.M.A. Remit only the cargo dues.

**INSTRUCTIONS TO  
CONTRACTING STEVEDORES**

1. Upon receipt of yellow and green copies from the member shipping company or agent, prepare remittance for the total assessment shown above made payable to Pacific Maritime Association and forward with green copy no later than the 20th day of month following the covered month to: K. F. Saysette, Vice President and Treasurer, Pacific Maritime Association, San Francisco 11, Calif.



593a

*Exhibit 55*

3. Mail yellow and green copies to contracting stevedore in sufficient time for the contractor to have his remittance in the hands of P.M.A. by the 20th day of the month following the covered month.
2. Retain yellow copy for your files.
4. Retain blue copy for your files.

THIS IS A FIVE PART FORM

|        |  |
|--------|--|
| Green  | —To contracting stevedore for transmittal to PMA with remittance |
| Yellow | —To contracting stevedore for file                               |
| White  | —To PMA with regular monthly report of tonnage for cargo dues    |
| Pink   | —Same as white copy above  |
| Blue   | —Originating Company's file                                      |

**Exhibit 56**

**[1] PACIFIC MARITIME ASSOCIATION**  
16 California Street  
Phone DOuglas 2-7973  
San Francisco 11, Cal.

December 14, 1961.

**Members:**

**MODERNIZATION AND IMPROVEMENT FUND ASSESSMENTS**

At a meeting of the Board of Directors of the Association held on December 13, 1961, resolutions were adopted having the following effect:

**SHIP CLERKS' ASSESSMENT**

A Fund contribution of 15¢ per man hour be paid on all ship clerk hours effective 8:00 A.M., December 18, 1961. The contribution is to be paid through the Central Records Offices in the same manner as the Pension, Welfare, Vacation and other hourly assessments. It will apply to hourly and monthly clerks.

**TONNAGE ASSESSMENT**

As a result of the hourly contribution on clerks mentioned above, the present tonnage contribution on general cargo, lumber, logs and automobiles is reduced from 27½¢ per ton to 24½¢ per ton and from 51½¢ to 5¢ per ton on bulk dry cargo. The change is to be effective with all loading and discharging operations commencing in any Pacific Coast port on and after 8:00 A.M., December 18, 1961. The present method of paying the tonnage assessment will remain in effect.

**WALKING BOSSES AND FOREMEN'S ASSESSMENT**

A new contribution of 4¢ per ton is to be made to a Walking Bosses' and Foremen's Mechanization

595a

*Exhibit 56*

Fund. The contribution will apply on general cargo, lumber, logs, and automobiles and will become effective on all loading and discharging operations commencing in any Pacific Coast port on and after 8:00 A.M., December 18, 1961. (This contribution would normally be 2¢ per-ton. The double rate is to run only until uncollected contributions due for 1961 have been made up.) The manner of payment will be the same as that employed for the present Mechanization Tonnage assessment.

The above items were adopted by the Board of Directors on the recommendation of the Funding Committee to meet certain legal requirements inherent in the plan. They are subject to review no later than March 15, 1962.

Additional details respecting the exact method of reporting and paying tonnage assessments under these revisions will be provided within the next few days. Your cooperation in complying with the new requirements will be appreciated.

K. F. SAYSETTE,  
Vice President & Treasurer.

KFS:IM

**Complainant's Proposed Findings of  
Fact and Conclusions of Law**

[1a] (Filed June 24, 1963)

**Findings of Fact**

1. Complainant is a corporation organized under the laws of the Federal Republic of Germany. It manufactures automobiles in the said Federal Republic, and it exports part of its production to the United States.

2. Respondents, Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), are corporations organized under the laws of the State of Nevada. They are engaged in the business of furnishing stevedoring and terminal services and facilities at San Francisco and Long Beach, California, respectively.

3. Intervenor is a non-profit organization organized under the laws of the State of California. Its membership includes respondents and consists of companies engaged in the operation of vessels from and to, and the furnishing of stevedoring and terminal services facilities in, ports located along the United States Pacific Coast between Canada and Mexico. Intervenor negotiates and administers collective bargaining agreements with labor unions representing employees of its members.

4. The by-laws of intervenor provide for the election of twenty-one directors comprising at least thirteen representatives of shipping lines and at least four representatives of stevedoring firms and terminal operators. The remaining four members are elected on an area basis. Intervenor's by-laws further contain provisions for voting at membership meetings which result in a majority of the votes being held by liner interests and a minority of the votes being held by stevedoring and terminal operator interests. As a result, liner interests dominate over



*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

[2a] stevedoring and terminal operator interests both in the Board of Directors and in membership meetings of intervenor.

5. Complainant causes a substantial number of the automobiles manufactured by it to be shipped to ports on the United States Pacific Coast. It is by far the largest shipper of automobiles to these ports. The total number of Volkswagen vehicles discharged on the United States Pacific Coast was 41,968 in 1962 and 38,474 in 1961.

6. These shipments of Volkswagen vehicles to the United States Pacific Coast are made preponderantly on vessels chartered by complainant, and complainant arranges directly at its own expense with stevedores and terminal operators for the discharge of these vessels. The number of complainant's vehicles carried to the United States Pacific Coast on vessels chartered by complainant was 28,296 in 1962 and 29,111 in 1961.

7. By reason of these shipments complainant is the largest shipper using chartered vessels for transportation to the United States Pacific Coast.

8. In addition to the vehicles transported on chartered vessels, complainant also ships a large volume of its vehicles to the United States on liner vessels. The volume of these liner shipments was 13,672 units in 1962 and 9,363 units in 1961. Arrangements for the discharge of these vehicles are made with stevedoring firms and terminal operators by and at the expense of the lines; and the freight charges by these lines to complainant include the expense of such discharge as a cost element.



*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

9. Since 1954, respondents have respectively supplied all stevedoring and terminal services and facilities required for discharge of those of complainant's vehicles which have [3a] been shipped on chartered vessels to the ports of San Francisco and Long Beach, California. Since 1954, respondents have also furnished stevedoring and terminal services and facilities to common carriers by water in connection with the discharge of complainant's vehicles at the said ports. Respondents further have acted as stevedoring and terminal contractors for common carriers by water in the discharge at the said ports respectively of automobiles not manufactured and not owned by complainant.

10. The services which respondents have rendered to complainant in connection with charter shipments and similarly to common carriers in the discharge of vehicles include the unlashing and unchecking, the discharge from ship to pier, the removal from shipside to storage area, sorting, storage and delivery of such vehicles.

11. In connection with these operations, respondents have made available to complainant and to the said common carriers the use of piers and of storage areas which respondents occupy pursuant to arrangements with port authorities and which respondents are required to and do clean, light, heat, maintain and provide with guard service.

12. In connection with the operations referred to in Finding 10, respondents have supplied such equipment as is usually required for stevedoring and terminal services, including a special patent bridle device or gear to pick vehicles up from the hold, tractors to either push or pull vehicles from shipside to storage areas and special hooks needed to connect the vehicles with such tractors.

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

13. In return for all services and facilities referred to in Findings 10 to 12, respondents charge complainant at the fixed rate of \$10.45 per vehicle, irrespective of the measurement or weight thereof.

[4a] 14. Respondents render services and furnish facilities similar to those referred to in Findings 10 to 12 to common carriers by water in the handling of automobiles and other types of cargo. Such transactions with common carriers represent about ninety percent of respondents' business.

15. On behalf of its members, intervenor negotiates and administers, among others, collective bargaining agreements with International Longshoremen's and Warehousemen's Union ("ILWU"), the certified collective bargaining representative of longshoremen on the Pacific coast between the Canadian and the Mexican borders. These agreements cover, among other things, wages and practices for all work done on behalf of intervenor's members in the loading, discharge and terminal handling of cargo shipped from and to ports in the said area.

16. On or about August 10, 1959, intervenor and ILWU executed a "Memorandum of Understanding" providing, among other things, for the creation of a special fund, in the amount of \$1,500,000, for the benefit of ILWU's members to be accumulated through employer contributions during a period of twelve months following execution of the said Memorandum. In return for the obligation to accumulate this amount, the employers were given, in the Memorandum of Understanding, certain concessions by ILWU with respect to work practices.

600a

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

17. On or about October 18, 1960, intervenor and ILWU executed a "Memorandum of Agreement" containing further substantial concessions by ILWU to the employers with respect to work practices. In return for these concessions, intervenor undertook, among other things, that the \$1,500,000 accumulated pursuant to the August 10, 1959 Memorandum of Understanding, together with a further amount of \$27,500,000 to be raised by employer contributions of \$5,000,000 a year over a period of five and one-half [5a] years, should be contributed to a jointly trusted Fund. The Memorandum of Agreement provided for the disbursement of this Fund so as to guarantee to the employees represented by the ILWU certain specified hours of straight time pay and so as to provide them further with certain retirement and death benefits.

18. On or about November 15, 1961, but as of January 1, 1961, intervenor and ILWU executed an instrument designated as "ILWU-PMA Supplemental Agreement on Mechanization and Modernization" providing in more detail for the creation, management and disposition of the \$29,000,000 Fund required by the Memorandum of Agreement of October 18, 1960.

19. The agreements between intervenor and ILWU referred to in Findings 16, 17 and 18 at all times left to intervenor the free determination, without any interference from ILWU, of the methods through which the Fund required by these agreements was to be raised.

20. During the twelve month period following execution of the Memorandum of Understanding of August 10, 1959, intervenor raised the required amount of \$1,500,000 through contributions from its members on the basis of the number of manhours of ILWU labor used by each of them.



*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

21. Shortly after the execution of the Memorandum of Agreement of October 18, 1960, intervenor created a Committee to advise on methods for the raising of the further amount of \$27,500,000 required by the said instrument. All of the members of the Committee were representatives of liner interests. The Committee submitted on or about January 4, 1961 a written report recommending that the \$27,500,000 be raised by an assessment on stevedoring and terminal operator members based upon revenue tons handled by them, with bulk cargo being counted only at one-fifth of the value of general cargo. The report further [6a] recommended that cargo was to be treated on a weight or measurement basis depending upon how it was manifested. The report advised future review of the assessment formula with respect to possible hardship cases and inequities.

22. At a meeting of the membership of intervenor on January 10, 1961, the revenue ton assessment formula recommended by the Committee was adopted by a vote of 246 out of 341. At the same meeting the Memorandum of Agreement of October, 18, 1960 was ratified by the membership.

23. On January 16, 1961, intervenor's Board of Directors adopted a resolution for the assessment at a rate of twenty-seven and one-half cents per ton for general cargo and of five and one-half cents per ton for bulk cargo in accordance with the membership resolution of January 10, 1961. This decision of the Board of Directors deviated from the resolution of the January 10, 1961 membership meeting, among other things, in providing that scrap metal should be treated as bulk cargo rather than as general cargo and further in providing that tonnage should be determined for purposes of the assessment in accordance with the manner in which cargo had been manifested during

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

the year 1959, without consideration of any possible change in method of manifesting occurring since then. The impact of the assessment upon automobiles was specifically considered by intervenor's Board of Directors during the course of this meeting.

24. At its meeting on January 16, 1961, intervenor's Board of Directors decided to create a new Committee to advise on possible changes in the method of raising the Fund required by the October 18, 1960 Memorandum of Agreement. All of the members appointed to this Committee were representatives of liner interests.

[7a] 25. This new Committee considered, from time to time, requests and proposals for changes in the method of raising the Fund required by the Memorandum of Agreement of October 18, 1960. The Committee recommended that no changes be made in favor of transshipped cargo, rice in containers and bananas. It did, however, recommend certain changes in favor of the United States Army and in favor of coastwise trade.

26. These recommendations in favor of the United States Army and of the coastwise trade were adopted by intervenor's Board of Directors on March 8, 1961. As to coastwise trade, it was decided that the assessment should be reduced to one-half. This reduction was recommended by the Committee on the ground that coastwise trade was "a very marginal business economically."

27. By resolution of intervenor's Board of Directors adopted on July 3, 1962, the tonnage assessment on certain shipments of lumber in coastwise trade, already reduced to one-half by the resolution of March 8, 1961, was further reduced to two and one-half cents, less than one-tenth of



*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

the assessment on general cargo in trades other than coastwise transportation. By a further resolution of intervenor's Board of Directors adopted on December 12, 1962, the tonnage assessment on certain other shipments of lumber in coastwise trade was reduced to the same amount. Both reductions were made effective as of January 1, 1961. The reductions were ostensibly made on the ground that the lumber shipments so favored were already subject to certain penalty wage rates; but the reductions were continued in effect although the penalty wage rates were subsequently abolished. The true reason for these reductions was to strengthen the position of carriers who were members of intervenor in their competition with outsiders.

28. As of December 18, 1961, intervenor's Board of Directors reduced the tonnage assessment on general cargo, [8a] lumber, logs and automobiles to twenty-four and one-half cents, but added a further tonnage assessment of four cents for a new Walking Bosses' and Foremen's Mechanization Fund and an assessment of fifteen cents per manhour on certain clerical work performed in terminal operations.

29. From at least March 3, 1961 to at least October 24, 1961, oral and written communications were had at meetings of committees of intervenor, among intervenor's staff and its President and between intervenor and ILWU tending to impose the tonnage assessment through union coercion upon employers not members of intervenor with the goal of thereby reducing the financial obligations of intervenor's members with respect to the Fund.

30. Complainant manufactures and ships to the United States Pacific Coast two different lines of vehicles. One of these, the passenger line, consists of the sedan, the sun-roof sedan, the convertible and the Karmann-Ghia. The

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

vehicles in this group have an average weight of 1,643 pounds per unit equal to about eight-tenths of a weight ton and an average measurement of 7.8 cubic tons. The other line consists of station wagons, pick-up trucks, panel trucks and other commercial vehicles and is referred to as the "transporter line." Vehicles in this line average a weight of 2,193 pounds equivalent to about 1.1 weight tons. They measure in the average 456 cubic feet corresponding to 11.4 measurement tons.

31. In the approximate ratio between passenger cars and transporters actually shipped by complainant to the United States Pacific Coast, an average vehicle would have a weight of about 0.9 tons and a measurement of about 8.7 tons. Accordingly, a revenue tonnage assessment on complainant's vehicles would be about ten times as high on a measurement basis, if a constant rate per ton were applied, as on a weight basis.

[9a] 32. Through an assessment on a measurement basis the total cost of the discharge of complainant's vehicles at United States Pacific Coast ports would be increased by about 26 percent while the average increase of the cost of discharge of all general cargo through intervenor's Fund assessment would amount to only about 2.2 percent.

33. An assessment on a measurement ton basis on automobiles would amount to a sum equal to about 58 percent of the total direct labor cost, without fringe benefits, involved in the discharge thereof. The total Fund assessments levied by intervenor against its members represent only about five percent of total direct labor cost of these members without fringe benefits.

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

34. Compared with either the total cost of discharge or the total direct labor cost involved in discharge, a measurement, ton assessment would burden automobiles about ten times as much as a revenue ton assessment at the same rate burdens general cargo in the average.

35. No commodity is burdened as heavily through the Fund assessment, in proportion to total discharge cost and total direct labor involved in discharge, as automobiles. The cargo classifications bearing the next highest burden pay on a weight basis about one-third less than automobiles and involve types of cargo loaded and unloaded at the United States Pacific Coast in small volume, but requiring much more labor for stevedoring, and terminal handling than automobiles.

36. On January 17, 1961, the day after the meeting of intervenor's Board of Directors referred to in Finding 23, at which the impact of the assessment upon automobiles had been discussed, a written protest against the assessment of automobiles on a measurement basis was submitted to intervenor on behalf of complainant.

[10a] 37. Following this written protest intervenor's Vice President and Treasurer issued on behalf of intervenor, but without authority, a ruling to the effect that the assessment on automobiles should be made in all cases on a measurement basis. This ruling purported to introduce, as to automobiles, a practice different from that used as to all other cargo, inasmuch as all other cargo was treated according to the way in which it had been manifested in 1959. This unauthorized ruling was precipitated by the fact that complainant uses to a large extent chartered vessels, thus withdrawing business from the liner interests dominating intervenor.

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

38. Protests on behalf of complainant were reviewed from time to time by intervenor's Committee. This resulted in the recommendation that, while all other cargo should be handled as manifested in 1959, automobiles should be burdened with the measurement ton assessment regardless of how manifested.

39. Numerous other protests on behalf of complainant and others against the measurement ton assessment of automobiles were unsuccessful, although remedial action was considered at various times by various persons and groups on behalf of intervenor.

40. The practices as to whether a specific type of cargo is manifested by weight or by measurement vary to a substantial extent from one trade to another and from one carrier to another. Intervenor, nevertheless, levies the Fund assessment for all types of cargo other than automobiles according to the manner in which such cargo happened to be manifested in 1959.

41. There was not in 1959 and there is not at this time any uniform practice with respect to the manifesting of automobiles, except that automobiles were at all times and are manifested and freighted in the inter-coastal and [11a] coastwise trade consistently on a weight basis and except that liner shipments of complainant's vehicles and other automobiles were and are manifested and freighted most frequently on the basis of the number of units, with an additional indication of weight and, in some instances, of measurement.

42. The treatment of automobiles by intervenor for purposes of Fund assessments cannot be sought to be justified by the existence of any prior consistent industry



*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

pattern dealing with this type of cargo on a measurement basis.

43. A measurement assessment on automobiles is particularly inappropriate with respect to stevedoring and terminal operations because measurement of vehicles has no significant relation to the amount of labor required in the handling of automobiles.

44. Intervenor's Fund assessment has an impact on automobiles about ten times as great as upon average general cargo and about one hundred times as great as upon lumber in coastwise trade.

45. The discharge of automobiles in general and of complainant's automobiles in particular at United States Pacific Coast ports was not benefited more, and was probably benefited less, than the discharge of general cargo in the average by the concessions which ILWU made in return for the creation of the Fund.

46. The economic effect of intervenor's attempted measurement on assessment on automobiles is to burden the stevedoring and terminal handling of automobiles with substantial expenses which actually relate to the stevedoring and terminal handling of other types of cargo and which are in any event wholly unrelated to the services in connection with which they are sought to be exacted.

[12a] 47. Since the institution of the Fund assessment by intervenor, respondents have from time to time attempted to collect from complainant, in connection with stevedoring and terminal services and facilities supplied in the discharge of vessels chartered by complainant, and in addition to the compensation for such services and facili-



*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

ties agreed upon between complainant and respondents, amounts equal to those assessed by intervenor on a measurement basis with respect to complainant's vehicles.

48. Complainant has at all times refused to pay these assessments, but has paid to respondents, in addition to the agreed compensation for services and facilities, amounts equal to the manhour assessments referred to in Finding 28.

49. On or about August 14, 1962, intervenor instituted an action against respondents in the United States District Court for the Northern District of California, Southern Division, to recover from respondents the measurement ton assessments with respect to complainant's automobiles. In this action, respondents impleaded complainant in order to recover from complainant the amounts which intervenor sought to recover from respondents. Thereafter, by order dated November 29, 1962 and amended December 11, 1962, the United States District Court granted complainant's motion to stay the said action pending submission to and determination by the Federal Maritime Commission, or by a court of last resort upon appeal from such Commission action, of the issue as to whether the measurement ton assessment as applied to complainant's automobiles violates sections 15, 16 or 17 of the Shipping Act, 1916. Complainant thereupon instituted the present proceeding.

**Conclusions of Law**

[13a] 1. Respondents are other persons subject to the Shipping Act, 1916, as defined in section 1 thereof.

2. Most of the other members of intervenor are either common carriers by water or other persons subject to the Shipping Act, 1916, as defined in section 1 thereof.

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

3. The arrangements made by intervenor with the participation of respondents and of other members of intervenor for the assessment of cargo for purposes of the Fund to be created in accordance with the agreements referred to in Findings 17 and 18 are cooperative working arrangements among carriers by water and other persons subject to the Shipping Act, 1916, fixing and regulating rates for stevedoring and terminal services and facilities and controlling and regulating competition within the meaning of section 15 of the Shipping Act, 1916.

4. The said arrangements have not been filed with or approved by the Federal Maritime Commission as required by section 15 of the Shipping Act, 1916. In accordance with the said provision, these arrangements and any action tending to carry them out, in whole or in part, directly or indirectly, are unlawful.

5. The assessment by intervenor of automobiles, at a rate applied per revenue ton on other general cargo, on the basis of measurement rather than weight, brought about collectively by respondents, by intervenor, by common carriers by water and by other persons subject to the Shipping Act, 1916, subjects automobiles, including complainant's automobiles, to undue and unreasonable prejudice and disadvantage within the meaning of section 16 of the Shipping Act, 1916.

[14a] 6. The assessment of automobiles on a measurement ton basis by intervenor and the attempted collection of such assessments by respondents are unjust and unreasonable practices by carriers by water and other persons subject to the Shipping Act, 1916, within the meaning of section 17 of the said Act.

*Complainant's Proposed Findings of Fact  
and Conclusions of Law*

7. In a system of assessments, in which other classifications of cargo are subjected to a levy per manifested ton at a uniform rate, it would be a just and reasonable practice for intervenor and respondents to apply the same rate to automobiles on the basis of weight.

---

**Certificate of Service**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing via first-class mail, postage prepaid, a copy to the attorneys for each such party in sufficient time to reach them on the date said document is due to be filed with the Board.

Dated at New York, New York, this 21st day of June, 1963.

WALTER HERZFELD,  
FOR PILLSBURY, MADISON & SUTRO,  
and

HERZFELD & RUBIN,  
*Attorneys for Complainant.*

(Initial Decision of Examiner 1)

611a

**Initial Decision of Benjamin A. Theeman, Examiner <sup>1</sup>**

(Filed June 5, 1964)

**[1] FEDERAL MARITIME COMMISSION**

---

[SAME TITLE]

---

Members of the Pacific Maritime Association who are common carriers and other persons subject to the Act including Respondents found to have entered as such members into a cooperative working arrangement whose aims and purposes were to establish a method of assessing and collecting contributions to pay their obligation under an agreement with the International Longshoremen's and Warehousemen's Union. The cooperative working arrangement found not to be within the purview of Section 15 of the Act in that it does not deal with (1) ocean transportation; (2) fixing or regulating transportation rates or fares; (3) giving or receiving special rates, accommodations, or other special privileges or advantages; (4) controlling, regulating, preventing or destroying competition; (5) pooling or apportioning earnings, losses, or traffic; (6) allotting ports or restricting or otherwise regulating the number and character of sailings between ports; or (7) limiting or regulating in any way the volume or character of freight or passenger traffic to be carried.

Respondents having included the assessment in its entirety in their rate to Volkswagen for discharging automobiles

---

<sup>1</sup> This decision will become the decision of the Commission in the absence of exceptions thereto or review thereof by the Commission. See Rules 13(d) and 13(h), Rules of Practice and Procedure, 46 CFR 502.224 and 502.228.



(Initial Decision of Examiner 1-2)

612a

*Initial Decision of Benjamin A. Theeman, Examiner*

found not to have violated Sections 16 and 17 of the Act.  
Complaint dismissed.

STANLEY S. MADDEN and WALTER HERZFELD, attorneys for Volkswagenwerk Aktiengesellschaft, complainant.

BRYANT K. ZIMMERMAN, attorney for Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), respondents.

EDWARD D. RANSOM and GARY J. TORRE, attorneys for Pacific Maritime Association, intervener.

This proceeding arises out of a complaint filed by Volkswagenwerk Aktiengesellschaft (Volkswagen) involving the payment of certain costs [2] charged by Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), hereinafter referred to collectively as "Respondents" for services rendered by Respondents to Volkswagen in the discharging the latter's automobiles (VW's) at Respondents' terminals in San Francisco and Los Angeles.

Volkswagen brings to the U. S. about 40,000 VW's annually through the Pacific ports. Respondents are contracting stevedores and terminal operators and as such are members of Pacific Maritime Association (Intervener or PMA). PMA is a corporation organized for the purpose of representing its members in collective bargaining with unions. Longshoremen and marine clerks employed by PMA members are members of the International Longshoremen's and Warehousemen's Union (ILWU). PMA and ILWU established a Mechanization and Modernization Fund herein called the "Mech Fund" whereby PMA members agreed to establish a trust fund for the benefit of employees in the sum of \$29,000,000 over a period of five and one half years beginning January 16, 1961. To procure this sum PMA, under a resolution approved by its members



*Initial Decision of Benjamin A. Theeman, Examiner*

and Board of Directors, assessed its members for contributions on a tonnage of cargo handled basis. Shortly thereafter, Respondents charged the amount of the assessment on automobiles (hereafter referred to as "Mech Fund charge") to Volkswagen as part of the cost of discharging VW's.

Volkswagen refused and continues to refuse to pay so much of the discharge rate as represents the Mech Fund charge claiming it is too high, and its inclusion in the cost of discharge was improper under the Shipping Act of 1916, as amended (hereinafter called "the Act"). Respondents, thereafter, refused to pay the equivalent amount as a Mech Fund contribution to PMA.

PMA filed a libel against Respondents in the United States District Court for the Northern District of California, Southern Division demanding payment of unpaid Mech Fund contributions from each Respondent as a PMA member. By Respondents' interpleader, Volkswagen was made a party [3] to the Court action. Upon Volkswagen's request the Court stayed the proceedings therein pending submission of the following issues to the Commission for determination:

1. Whether the assessments claimed from [Volkswagen] are being claimed pursuant to an agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U. S. C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.

2. Whether the assessments claimed from [Volkswagen] result in subjecting the automobile cargoes of [Volkswagen] to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the

*Initial Decision of Benjamin A. Theeman, Examiner*

the respective ports and are clearly "other persons" subject to the Act.<sup>5</sup>

3. *Pacific Maritime Association* was organized in 1949 as a non-profit corporation with power to negotiate and administer labor contracts with offshore and onshore unions on behalf of its members. PMA membership consists of and is open to carriers (domestic and foreign), marine terminal operators, and stevedore contractors in the various ports of the Pacific Coast. Collective bargaining occurs within a unit defined by the National Labor Relations Board as to longshore functions, i.e., work of longshoremen and marine clerks. This proceeding deals only with longshore functions, wherein the ILWU, for collective bargaining purposes, is certified to represent the longshoremen and marine clerks employed by the marine terminal operator and stevedore contractor members of PMA.<sup>6</sup>

Article IV of the by-laws of PMA provides for a division of the membership into 8 groups of similar interests, among other reasons, for the purposes of representation on the Board of Directors. Article I vests all power in a Board of 21 Directors who are selected from the groups above mentioned in a manner and in the proportion set forth in the By-laws.

Article XIII provides that the members shall "pay such dues and assessments as shall be fixed and levied by the Board of Directors . . ." One such is "Cargo Dues" which may be measured by (1) each ton of cargo loaded or discharged at U. S. Pacific Coast ports by or for mem-

---

<sup>5</sup> See page 26.

<sup>6</sup> Under similar circumstances collective bargaining occurs between PMA and ILWU for seamen employed by the carriers under a master contract also certified by the Labor Board for a unit embracing American flag vessels headquartered on the Pacific Coast.

(Initial Decision of Examiner 5-6)

617a

*Initial Decision of Benjamin A. Theeman, Examiner*

bers or for non-members; and (2) the man hours performed by employees of the members under the terms of the ILWU agreements. The Board of Directors, in establishing "Cargo Dues" may use either or a [6] combination of these bases. Section 2, Article XIII provides that, "In fixing and levying that portion of the cargo dues according to tonnage handled, the Board . . . may establish different rates per ton, or other measurement unit applicable to different loading or discharging handling conditions," and "shall . . . fix rules for calculation of the tonnage or other measurement units loaded, discharged, and/or handled, by or for members . . .". The Board of Directors' determinations "in respect to all of the matters specified in this Section shall be final and conclusive."

Article XI, Section 2 provides that a contract with a union, or one imposing personal liability on the members must first be approved by a vote of members holding a majority of the voting power of the entire membership. Section 3 provides that a member who has not authorized or accepted in writing such contract and who has not voted in favor of its approval may avoid all obligation thereunder by resigning from PMA within seven days after the vote on such contract. But after a member is bound it must abide by its obligations or be subject to certain penalties including liquidated damages.

It is claimed by no party that PMA is subject to the Act. Nor is there any evidence to show that PMA engages in any of the activities contemplated by the Act. On the other hand, there is no question that many PMA members are subject to the Act, being common carriers by water, and organizations engaged in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

*Initial Decision of Benjamin A. Theeman, Examiner*

**B. NEGOTIATIONS FOR AND ESTABLISHMENT OF THE  
MECHANIZATION AND MODERNIZATION FUND.**

1. In 1957, ILWU and PMA started bargaining and negotiating with regard to the mechanization and utilization of labor saving devices in connection with the work of cargo-handling for the mutual benefit of the work force and the employers. This meant (1) on the part of ILWU, [7] to permit to employers the unhindered introduction and maintenance of labor saving devices, and the efficient operation of the workers; and (2) on the part of PMA (i.e. PMA members who employed longshoremen), to share with the workers resultant savings in wage costs, and to assure that the change in work methods would create no unsafe working conditions, or result in a "speed up" of the individual worker.

2. On August 10, 1959, as a result of continued collective bargaining, an agreement was executed which provided among other things, that additional time, not to exceed one year from June 15, 1959, was needed for study and additional experience in connection with mechanization. Within this period, PMA agreed that it would create a fund of \$1½ million for the benefit of the work force. The agreement did not specify how PMA was to raise this sum but the sum was accumulated by PMA assessing its members on a man hour basis.<sup>7</sup>

3. Further negotiation gave rise on October 18, 1960, to a "Memorandum of Agreement on Mechanization and Modernization". The details of this agreement are not pertinent to this proceeding. It suffices our purpose that the agreement furthered the goal of ILWU and PMA to establish certain benefits for the working force to be paid

<sup>7</sup> See Article XIII of the PMA By-laws, above.



(Initial Decision of Examiner 7-8)

619a

*Initial Decision of Benjamin A. Theeman, Examiner*

out of a \$29,000,000 trust fund to be established by PMA. To be included in this fund was the \$1½ million already mentioned, the remainder was to be accumulated over a five and one-half year period at the rate of \$5,000,000 per year. The agreement was effective upon ratification by the ILWU and PMA and was to expire on July 1, 1966.

4. The Mech Fund plan contemplated that the members of PMA in the bargaining unit commit themselves individually and severally to the payment of the fund. In light of this, ILWU agreed that the method of collection of the fund from the PMA membership was to be reserved to PMA. In November 1960, Mr. St. Surp, President of PMA, appointed a [8] six man Committee on Work Improvement Fund to determine and recommend a method of assessment to the Board of Directors and the PMA membership.<sup>8</sup>

5. During January, 1961, the Board of Directors and the PMA membership adopted the method of raising the Mech Fund contained in the majority report of the Work Improvement Fund Committee and approved the Agreement with ILWU.

6. On November 15, 1961, the Mech Fund in its final form was established by PMA and ILWU when they executed a "Supplemental Agreement" effective January 1, 1961. The parties to the agreement are the ILWU and its locals representing certain longshoremen and marine clerks, hereinafter referred to as "Employees" and the PMA representing contracting-employers, including some steamship

---

<sup>8</sup> The decision of this committee and the ensuing events in PMA gave rise to the Volkswagen complaint herein. This aspect of the proceeding is dealt with more fully in paragraphs 15 through 39 below.



*Initial Decision of Benjamin A. Theeman, Examiner*

Shipping Act, 1916, as amended, 46 U. S. C. 815 (1961).

3. Whether the assessments claimed from [Volkswagen] constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U. S. C. 816 (1961).

Thereafter Volkswagen filed the complaint in this proceeding alleging that Respondents, other PMA members and PMA had conspired or agreed to impose an extra charge on Volkswagen for terminal services in discharging VW's in violation of Sections 15, 16 and 17 of the Act. PMA was permitted to intervene.

A. PARTIES TO THE PROCEEDING

1. *Volkswagen* is a corporation of the Federal Republic of Germany. It manufactures automobiles there and exports a number of them to the United States. In 1961, Volkswagen imported through U. S. Pacific ports 38,474 VW's. Of these, 29,111 or about 75% were transported in vessels chartered by Volkswagen; the remainder of 9,363 were transported by common carrier. In 1962, 41,968 VW's were shipped to the Pacific Coast; 28,296, or about 70% on chartered vessels and the remainder, 13,672 on common carriers. During these years, VW's represented the largest number of automobiles imported through U. S. Pacific Coast ports; and the volume of Volkswagen's charter shipment to those ports was greater than that of any other dry cargo charter-shipment.

[4] 2. *Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles)* are engaged in business as contracting stevedores and ocean terminal operators in San Francisco and Long Beach.<sup>2</sup> The work is done for common carriers and contract carriers and all forms

*Initial Decision of Benjamin A. Theeman, Examiner*

of marine transportation, both by vessel or barge. About 90% of their business is for common carriers, 10% for contract carriers. Respondents are members of the Pacific Maritime Association, the Intervener herein. Respectively, they are members of the San Francisco Bay Carloading Conference, approved by the Federal Maritime Commission on June 10, 1946 under Agreement 7544, and the Southern California Carloaders Association, approved June 25, 1946 under Agreement 7544, both of which have filed conference agreements approved under section 15 of the Shipping Act, as amended.<sup>3</sup>

Since 1954, Respondents have discharged VW's in San Francisco and Long Beach brought by chartered vessels<sup>4</sup> and common carriers. They have also discharged other makes of automobiles, government vehicles and other general cargo. The stevedoring operation in the California ports takes in movement of the cargo from a point of rest aboard the vessel to point of rest in storage and vice versa. In addition to stevedoring, Respondents provide clerking, sorting, and checking and storage services. In San Francisco and Long Beach, Respondents occupy piers under an arrangement with the respective port authorities and are obligated to provide light, heat, cleaning and general maintenance, including watchmen. As more fully discussed hereafter, Respondents operate terminal [5] facilities in

<sup>2</sup> The operations at both places are similar. For the purpose of this decision the Respondents will be considered collectively.

<sup>3</sup> There is testimony that Respondents are members of an organization known as Stevedoring Contractors of the Pacific Coast formed in 1962 and approved by the Commission. The Commission's records do not reveal this information.

<sup>4</sup> Since 1960, Volkswagen is the only charter carrier of automobiles to these ports.

*Initial Decision of Benjamin A. Theeman, Examiner*

lines and terminal operators<sup>9</sup> who employ employees directly and the steamship lines<sup>9</sup> who contract with Employers to move and handle cargo. The Supplemental Agreement provided for the collection and establishment of three trusts totalling \$29,000,000 as an obligation of the PMA members with exclusive power reserved to PMA, "to adopt and change the method, manner and amount of collecting" contributions from its member companies. PMA was designated the collecting agent of the Employers and was to act as a conduit for the passing of funds to these trusts. All payments to the fund by the Employers and by PMA to the Trusts are final and irrevocable. None but Employees, or their beneficiaries, are entitled to the benefits set forth in the Agreements.

7. For the period from January 16, 1961 when payments to the fund started, through December 31, 1962 approximately \$10,000,000 had been paid into the fund over and above the \$1½ million dollars previously [9] collected. About \$130,000 remains unpaid by the stevedore companies handling VW's.

**C. FOR YEARS PRIOR TO THE MECH FUND PMA MEMBERS REPORTED AND PAID TONNAGE DUES WITHOUT OBJECTION.**

8. Since at least 1958, Respondents, and other PMA members (stevedoring contractors, terminal operators or common carriers) paid cargo or tonnage dues to PMA<sup>10</sup> as instructed and assessed by PMA on about 600 items of cargo handled. Customarily the amount of this payment was included in the rate charged the carrier or if it was a chartered vessel to the cargo.

<sup>9</sup> These may be members or non-members of PMA.

<sup>10</sup> See Article XIII of the PMA By-laws, *supra*.

(Initial Decision of Examiner 9-10)

621a

*Initial Decision of Benjamin A. Theeman, Examiner*

9. Since at least 1958 Respondents<sup>11</sup> reported and paid their tonnage dues assessment on automobiles including VW's on a measurement ton basis.

10. Since at least 1958, Volkswagen shipped its VW's to U. S. Pacific Coast ports on charter carrier or common carrier as unboxed vehicles. Whether the automobile was a sedan, convertible, transporter, or Karmann-Ghia, each was considered a unit for discharging purposes, though the weight and cubic content of each type varied from the other.

11. The discharge rate for VW's transported by charter was negotiated on a unit basis between Respondents and Volkswagen and was known as the "unit price". It was established upon a kind of "cost plus" basis, wherein labor involved in the discharge of the VW's was broken down into various components and the cost for each phase determined. These costs, plus other items, such as overhead and profit yielded the rate. One of the items making up the "unit price" was the amount of the assessment for tonnage dues.

12. Admittedly, Volkswagen was aware that the tonnage dues item was included in the rate; that for automobiles the amount of the assessment [10] was computed on a measurement ton basis; and that Respondents paid tonnage dues to PMA on that basis.

13. The record is not clear as to how the VW's and other automobiles were shipped via common carrier. Generally they were transported on a unit basis but the

---

<sup>11</sup> At all times here involved, automobiles were considered measurement cargo in foreign commerce; were transported on a weight basis in the coastal and intercoastal trades; were freighted on a unit basis by some carriers, i.e., a lump sum for a particular car or model, and particularly by Volkswagen in its charter arrangements.



*Initial Decision of Benjamin A. Theeman, Examiner*

measurement and weight were shown on the manifest. In any event, the charge for stevedoring to the carrier was on a measurement ton basis and tonnage dues to PMA were reported and paid on that basis.

14. Neither Volkswagen nor any other person protested the method used to report or pay tonnage dues, or the fact that the item was included in the stevedore's or carrier's rate.<sup>12</sup>

D. ESTABLISHMENT OF THE METHOD OF COLLECTING CONTRIBUTIONS TO THE MECH FUND.<sup>13</sup>

15. The method to be adopted by PMA to collect the Mech Fund received considerable attention during the early collective bargaining between ILWU and PMA. Four or five collection methods were discussed. Mr. St. Sure testified that the ILWU's interest in the method to be adopted, ceased after it was agreed that the method of collection was to be reserved to PMA. As already stated, \$11½ million had been collected on a manhour basis. In the months of June and December 1960 some members of the PMA protested the manhour basis as unfair.

16. In the meantime the Work Improvement Fund Committee appointed in November 1960 was working on its recommendations. As testified by Peter Teige, Chairman of the committee, they were hopeful of coming "up with a system that would not be excessively burdensome to anyone" but particularly one that would be "simple in administration".

---

<sup>12</sup> In 1958, PMA advised its membership that reporting and payment of tonnage tax on automobiles (or any other cargo) on a weight basis when measurement basis should be used was an error. PMA requested corrected reports from the members.

<sup>13</sup> In an attempt to show clearly the agreement here involved, the following paragraphs set forth in some detail the actions and resolutions of PMA and PMA members that constitute the agreement.



*Initial Decision of Benjamin A. Theeman, Examiner*

17. On January 4, 1961, the Work Improvement Fund Committee issued its recommendations in the form of a majority and minority [11] opinion.<sup>14</sup> The division was four to two. It is not considered essential for the purposes of this decision to state this report in detail. It shows that the Committee considered at least five methods or combination of methods of assessment. Some of these had arisen in the earlier discussions between PMA and ILWU. Reasons for and against each method were carefully set forth. The majority recommended that "the contributions to the Fund be raised on a cargo tonnage basis," which "would be the same as the present tonnage formula used for the computation of a portion of PMA dues. In this formula, bulk cargo tonnage is counted at one-fifth the value of general cargo tonnage. The tons are revenue tons—weight tons of 2,000 pounds, measurement tons of 40 cubic feet, and lumber at 1,000 board feet per ton. The cargo is that manifested for loading or discharging at Pacific Coast ports. Special rules apply to coastwise and transshipped cargo. The payments would be made by the employers of ILWU that [are] subject to the agreement."

18. On January 6, 1961 after "considerable discussion" on the subject, the Board of Directors adopted the majority report except that they provided that "all tonnage [shall be] treated equally as to rate for a period of six months, and during this interim further studies will be made on the subject".

19. On January 10, 1961, at a meeting of the PMA members, again after considerable discussion, the PMA members adopted the original majority report of the committee restoring the language, "with bulk cargoes at one-fifth the general cargo rate."<sup>15</sup> At the same time, they directed additional study of the method with a report due

---

<sup>14</sup> They are set forth fully in Appendix I.

<sup>15</sup> This resolution is fully set forth in Appendix II.

*Initial Decision of Benjamin A. Theeman, Examiner*

in six months. The Board of Directors was directed to examine and determine the definition of bulk cargo.

[12] 20. On January 11, 1961 a notice was sent out to the PMA membership advising them of the action taken at the respective meetings and that "The Treasurer will notify you as to the contribution rates and effective date."

21. On January 16, 1961, the Board of Directors set the rate of contribution to the Fund at 27½ cents on general cargo and 5½ cents on bulk cargo effective as of January 16, 1961. The Board also declared that "the tonnage declarations made by the companies are to be made in exactly the same manner as manifested and reported during the year 1959,<sup>16</sup> and any changed method of manifesting from that date will not be valid for reporting tonnages covering the fund contributions." At the January 16 meeting, the Board of Directors decided in response to a question that had been raised that scrap iron, pig iron and steel shavings should be considered as bulk cargo for assessment purposes. During the discussions it was pointed out that a change in the assessment rate of one commodity might lead to other changes; and that the subject of automobiles had already been raised.

22. By notice, dated January 17, 1961, headed "MECHANIZATION AND MODERNIZATION FUND" the Treasurer notified the PMA membership of the action of the Board of Directors. It stated in pertinent part:

- 1) Contribution rate on General Cargo will be 27½¢ per ton, as manifested with 2000 pounds weight,

---

<sup>16</sup> Volkswagen questions the appropriateness or legality of the action of the Board of Directors in inserting the year 1959, when it was not included in the resolution adopted by the membership. Volkswagen also questions the legality of other actions by PMA officials in their official capacity. This is considered without consequence or materiality to the issues in this proceeding.

*Initial Decision of Benjamin A. Theeman, Examiner*

40 cubic feet measurement and 1000 board feet of lumber constituting a ton. This is comparable to reporting presently being made by members for PMA tonnage dues purposes.

2) Contribution rate on Bulk Cargo will be  $5\frac{1}{2}\%$  per ton . . .

4) Effective date of contribution is January 16, 1961 . . .

5) Coastwise and transshipped cargoes will carry the full contribution rate for mechanization purposes.

[13] 6) Tonnage declarations by companies are to be made in exactly the same manner as manifested and reported to the Association for dues purposes during the year 1959 (excepting scrap iron and pig iron) and any changed method of manifesting from that date will not be valid for reporting tonnages covering Mechanization Fund contributions.

7) Declarations of tonnages will be made, as in the past, by member steamship companies and contracting stevedores reporting for non-member companies and government agencies, being made in exactly the same manner by such companies as PMA dues. Mechanization contributions are part of a labor contract, . . ."

The declaration form presently used for reporting tonnages to the Association for dues purposes will also be utilized for the Mechanization and Modernization program.

23. At about this time, PMA again became aware that some of the members had been reporting automobiles for tonnage dues purposes on a weight basis instead of on a

*Initial Decision of Benjamin A. Theeman, Examiner*

measurement basis. By letter dated February 3, 1961, PMA informed the membership that this was error.<sup>16a</sup> The steamship companies and contracting stevedores were told that if they had been reporting automobiles (or any other cargo) using weight when measurement should have been used, a supplementary tonnage report should be submitted together with a check to cover retroactively the additional amount of dues involved. The letter stated further that "Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis."

**E. RESPONDENTS INCLUDE THE MECH FUND ASSESSMENT IN THE AUTOMOBILE STEVEDORING RATE.**

24. On a measurement ton basis the amount of the Mech Fund contribution on automobiles was about 10 times as great as the amount on a weight ton basis. The effect on Volkswagen may be shown by using the average figures for the VW's discharged for approximately one year during 1962. According to these figures the measurement ton (MT) of the average VW was 8.7 tons and the weight ton (WT) of the average of the VW was 0.9 tons. At 27½¢ a ton, the Mech Fund assessment on a measurement basis equals \$2.35 per vehicle; and on weight equals \$.25.

[14] 25. At or after the PMA membership meeting in January, 1961, Respondents and about 5 or 6 other stevedores, all of whom discharged VW's (hereafter referred to as "the group"), discussed among themselves the impact of the Mech Fund assessment on the cost of discharging automobiles. It was the consensus of the group that the company doing the discharging would be unable to absorb the contribution if it was assessed on a measurement basis

---

<sup>16a</sup> This letter mentioned the previous letter dated January 16, 1958 dealing with same reporting error on automobiles.

*Initial Decision of Benjamin A. Theeman, Examiner*

and it was indicated that the assessment should be passed on in the stevedoring rate to the customer.

26. The record does not clearly show how soon after the above discussions Respondents included the amount of the Mech Fund assessment on automobiles in the stevedoring rate. It is concluded that this occurred shortly after January 16, 1961.

27. Aware of Volkswagen's dissatisfaction, Respondents some time afterward offered Volkswagen a lower rate whereby Respondents would absorb an amount equal to that if the assessment had been made on a WT basis. Volkswagen rejected this offer and stated it would not pay the Mech Fund charge in the rate if it were assessed on a MT basis. Since Volkswagen was satisfied with Respondents discharging operations, Volkswagen continued to use them. For a while the charge continued at the old rate. Some time later, a lesser rate was negotiated. The rates contained the 27½¢ item. At all times Volkswagen paid the rate except for the 27½¢ item.

28. When Volkswagen ceased to pay the Mech Fund charge in the rate, Respondent ceased to pay an equal amount representing the assessment on VW's to PMA.<sup>17</sup>

29. There is no substantial evidence to show that the actions and discussions of the group (a) were part of the regular and official business of PMA or authorized or ratified by PMA; or (b) were part of [15] the regular and official business of the PMA membership, or (c) were thereafter ratified by PMA, or the PMA membership.

30. Evidence was introduced to show there were cargo items shipped or handled on a MT basis where the amount

<sup>17</sup> Similar actions occurred with and by other stevedoring contractors handling VW's.



*Initial Decision of Benjamin A. Theeman, Examiner*

of the Mech Fund assessment computed on that basis exceeded the amount of the assessment computed on a WT basis. In no instance, was the difference greater than on automobiles.

**F. PMA REJECTS VOLKSWAGEN'S PROTESTS.**

31. Volkswagen became aware immediately of the MT assessment on automobiles. By letter dated January 17, 1963 addressed to PMA, it protested the assessment as a discriminatory burden on Volkswagen and requested that PMA reconsider the basis of the proposed Mech Fund assessment. Among the suggestions made was that the levy on automobiles be made on a WT basis. A similar protest was made by the Port of San Francisco.

32. In January 1961, the old Committee on the Mech Fund had been reappointed. The New Funding Committee held several meetings in February, 1961 to consider several protests that PMA had received, including that of Volkswagen. The Committee after consideration recommended to the Board of Directors that some be approved and some be disapproved.<sup>18</sup> With regard to automobiles, the position

---

<sup>18</sup> The committee recommended approval of requests that (1) empty Army conexes be not assessed as are empty commercial containers; (2) cargo containing Army conexes be assessed as are commercial containers moving in the trade; i.e. on manifested measurement (or weight as the case may be) basis of the cargo contained therein; and (3) coastwise cargo be assessed only once for each ton of cargo carried as has been the custom 50% at the point of loading and 50% at the point of discharge. The committee recommended disapproval of requests that (1) Army vehicles be assessed on other than a measurement basis; (2) bananas be considered bulk instead of general cargo; (3) similarly with bulk rice in containers; (4) transshipped cargo be assessed in a manner other than full rate when off-loaded and again when on-loaded because the full payment at both places was in accord with present procedure; and (5) mail should be assessed on a weight basis.

*Initial Decision of Benjamin A. Theeman, Examiner*

advocated by Volkswagen was rejected. The Committee recommended the continuance of [16] the assessment on an MT basis regardless of how it was manifested.<sup>19</sup> On March 8, 1961, the Board of Directors adopted the recommendations of the New Funding Committee.

33. The manifesting practice on the Volkswagen charter ships carrying VW's was consistent in that the VW's were manifested on a unit basis. The manifest showed no freight because it was a chartered ship. The manifest always showed the weight in kilos. Many times the manifest showed weight and measurement also. Where the VW's were transported by common carrier, the automobiles are manifested as a rule on a unit basis but the weight and measurement were both indicated thereon. The tariff on automobiles including VW's is stated on a unit basis, but the rate is dependent on the measurement of the auto. The Mech Fund assessment was included in the tariff rate.

34. On May 15, 1961, the Chairman of the New Funding Committee requested suggestions from PMA members for new or improved methods of assessing of the Mech Fund. At the request of Volkswagen, several stevedoring contractors, including Respondents, suggested that the Mech Fund assessment be established on unboxed automobiles on a "unit" basis rather than on a measurement ton basis.

35. The problem concerning payment by Volkswagen of the Mech Fund costs remained unsolved. Volkswagen continued to press for another assessment basis. At Volkswagen's request a meeting was arranged between representatives of the New Funding Committee, and Volkswagen for November 27, 1961. This meeting was also attended by other staff members of PMA and representatives of

<sup>19</sup> This appears to conform to the PMA practice in the collection of its tonnage tax. See footnote 11.

*Initial Decision of Benjamin A. Theeman, Examiner*

stevedoring contractors handling VW's. At this meeting Volkswagen pointed out that the increase in costs due to the present Mech Fund assessment would embarrass Volkswagen in its competitive position with other compact cars. Again Volkswagen proposed a unit basis for assessment purposes.

36. Several of the stevedoring contractors including Respondents, supported Volkswagen's position. Respondents stated that as stevedoring [17] contractors and members of PMA they knew they were free to absorb the assessment if they so desired. It was their belief that they could not do so. They also stated that the action of PMA in singling out automobiles to be assessed in this manner was arbitrary.

37. The New Funding Committee met on three occasions thereafter and on December 12, 1961 decided to reject the Volkswagen proposal. The unit proposal was considered unacceptable because of the undesirable effect it would have on the overall Mech Fund program. They considered that if a unit assessment were established for automobiles, units would also have to be set up for other items of cargo from tiny boxes to locomotives, with a separate charge or assessment per unit. The recommendations of the Committee were accepted and by letter dated March 27, 1962, PMA informed Respondents there would be no change in the Mech Fund assessment on automobiles.

**G. OTHER CHANGES IN THE MECH FUND PLAN.**

38. At a meeting of the PMA Board held on December 13, 1961, they adopted a recommendation of the New Funding Committee effective December 18, 1961. Some concern had been shown that some employers of clerks were

*Initial Decision of Benjamin A. Theeman, Examiner*

not contributing an appropriate share to the Mech Fund. To remedy this an assessment of 15¢ per man hour was set up on clerks. At the same time, the tonnage assessment was reduced to 24½¢ and the bulk cargo assessment to 5¢. In the same resolution a new assessment of 4¢ per ton on general cargo, lumber, logs and automobiles was established to be made at a Walking Bosses' and Foremen's Mechanization Fund. Volkswagen has paid the 15¢ man hour charge on clerks.

39. Subsequently, at a July 3, 1962 meeting, the Board of Directors approved a recommendation of the New Funding Committee reducing the Mech Fund rate of assessment on the coastwise movement of lumber to \$.05 per ton payable 2½¢ at the port of loading and 2½¢ at the port of discharging, 1000 board feet to constitute a ton. The reasons given for the reduction were that in the past decade a penalty rate of \$1.00 per hour straight [18] time and \$1.50 per hour overtime had been charged for the handling of coastwise lumber. The rate was first established by collective bargaining because of improved methods of handling such cargo. No other type of cargo is subject to a similar penalty rate. For the purposes of the Mech Fund assessment, the coastwise trade was limited to such trades to which the penalty rates of \$1.00 per hour straight time and \$1.50 per hour overtime apply, as set forth in the basic longshore agreement.

**H. NON-MEMBERS OF PMA PAY THE MECH FUND CHARGE.**

40. Not all employers of longshoremen are members of PMA. The employees of these non-members belonged to the ILWU. The supplemental Agreement to the Mech Fund provided that employers who are non-members of PMA



*Initial Decision of Benjamin A. Theeman, Examiner*

shall contribute to the Mech Fund at comparable rates and in a like fashion as member employers. Negotiations between the ILWU and PMA resulted in a working arrangement whereby the Union would lend its assistance that non-member companies make contributions "in exactly the same manner and in the same amounts as PMA members retroactive to January 16, 1961." Under this arrangement non-member companies paid an assessment for automobiles on a measurement ton basis.

**[19] I. COMMON CARRIERS PAY THE MECH FUND  
CHARGE ON AUTOMOBILES.<sup>20</sup>**

41. Common carriers to the U. S. Pacific Coast ports carried unboxed automobiles at all times here involved. In addition to VW's there were Renaults, Mercedes and others. They were carried on berth term, that is the carrier paid for

---

<sup>20</sup> An exception is Wallenius Lines an independent carrier that had been transporting VW's to the U. S. Pacific Coast since at least 1959. The freight rate on automobiles including VW's is quoted in the tariff on a unit basis, but the rate is dependent upon the measurement of the auto. In some instances the tariff shows the actual measurement of the car and the freight rate. The automobiles are manifested as a rule on a unit basis but the weight and measurement are both indicated thereon. Commencing in early 1961, the stevedoring contractors included the amount of the Mech Fund contribution in the stevedore billings to Wallenius Lines. Wallenius at Volkswagen's request protested the item and paid the bill with the exception of the Mech amount. As a result, the Line was advised by the stevedoring contractors that its vessels would not be discharged unless the items were paid. Under these circumstances Wallenius Lines agreed with the contracting stevedores to pay the Mech Fund item with the explicit understanding that once the matter was resolved, if any monies were owing to Wallenius they would be refunded. This continued until about the end of 1962. Then, Wallenius learned that Mech Fund items contained in the stevedoring rates were not being paid by Volkswagen and they ceased to pay it also.



*Initial Decision of Benjamin A. Theeman, Examiner*

the loading and discharging.<sup>21</sup> The tariff rate for unboxed vehicles was established, if by conference, under an agreement approved by the Federal Maritime Commission and a tariff filed with the Commission, if by an independent, under a tariff filed with the Commission. No conference increased its rates because of the Mech Fund contribution. There is no evidence that any independent carrier did so. There is no evidence that any shipper of automobiles other than Volkswagen complained of the Mech Fund, its assessment or method of collection.

[20] J. BENEFITS UNDER THE MECH PLAN TO AUTOMOBILE STEVEDORING.

42. Commencing with about 1961, in connection with the discharge of automobiles, the stevedoring contractors were able to increase the rate of production of their gang hour. This was attributable to improvements on the VW vessels that facilitated unloading of the automobiles. Officials of stevedoring contractors testified that they could not foresee that they would be able to develop improvements in the discharging of VW's in the immediate future under the latitude allowed employers under the Mech Fund plan. This testimony did not apply to other items of cargo. Officials of the stevedoring contractors admitted they received general benefits from the Mech Fund plan, such as freedom from strikes or slow-downs. No evidence to show the amount of benefit or savings that accrued or could accrue to stevedoring contractors from the Mech plan was referred to or in-

---

<sup>21</sup> Military unboxed vehicles are an exception and are carried on an F.I.O. basis, i.e. the military is responsible for loading and discharging. The Military Department at first questioned the inclusion of the Mech Fund charge in their rate but after discussion with PMA agreed to pay the Mech Fund contribution on an MT basis. They were doing so at the time of the hearing.

*Initial Decision of Benjamin A. Theeman, Examiner*

roduced. All parties agreed that the Mech plan was beneficial to the trade.

**K. ACTIONS BY RESPONDENTS AND PMA AS TO THEIR  
RESPECTIVE LEGAL OBLIGATIONS IN RESPECT TO  
VOLKSWAGEN.**

43. In March 1961, after Respondents had notified PMA of Volkswagen's refusal to pay the Mech Fund charge, Respondents requested assistance from PMA as to the legal position they should take in demanding payment. Suit against Volkswagen was considered but because of a possible disturbing effect it was decided that no legal action should be taken until after the execution of the Supplemental Agreement between PMA and ILWU.

44. In the early part of December, 1961, Respondents requested authority of PMA to bring suit against Volkswagen for the payment of the 27½¢ item. On December 13, 1961, at a meeting of the Board of Directors of PMA it was decided that PMA would give legal and moral support to the Respondents if suit were started and that PMA would participate in any future legal action. The Board referred the matter to its legal counsel.

45. On July 3, 1962, the Board of the Directors met and modified the above position. PMA counsel was authorized to assist Respondents [21] (and other stevedoring companies handling Volkswagens) only if any action by or against Respondents raised issues which might jeopardize the Mechanization Plan. In that case, PMA Counsel was authorized to intervene and if necessary, assume responsibility for handling that portion of the action involving such issues. In the same resolution, the Board of Directors, reserved to PMA the right to institute action against PMA members in default in payment of their assessments.

*Initial Decision of Benjamin A. Theeman, Examiner*

**L. RATIFICATION BY PMA MEMBERSHIP OF ACTS OF BOARD OF DIRECTORS.**

46. At a meeting of the PMA membership held in March 1961, 1962 and 1963 respectively, the PMA members ratified the actions of the Board of Directors for each previous calendar year.

**M. THE AGREEMENT AMONG THE PMA MEMBERS TO COLLECT THE MECH FUND ASSESSMENT.**

Volkswagen's complaint goes to the actions of PMA, its Board of Directors and its Committees. As has already been stated there is no question that PMA is not a person subject to the Act. It follows as a matter of course that neither its Board of Directors or its Committees would be persons subject to the Act and that agreements among them in that capacity would also not be subject to the Act.

It has been found, however, that Respondents are PMA members; and that PMA members are common carriers and other persons subject to the Act.<sup>22</sup> It also has been found that the PMA membership, including Respondents, entered into a Mech Fund agreement among themselves through the resolution [22] of January 10, 1961. This resolution has

---

<sup>22</sup> It has already been found that Respondents, common carriers and terminal operators, all subject to the Act are PMA members. It is this factor that raises the question of Commission jurisdiction over the agreement entered into among them. A distinction must be drawn between the actions of Respondents as members of PMA and their independent actions as stevedoring contractors or terminal operators. An example of the former is the vote on January 10, 1961. An example of the latter is the discussion with the other stevedoring contractors about the inability to absorb the Mech Fund assessment. This decision is made on the basis that it is the former type of action that Volkswagen is complaining about although not specifically labeled as such. As to the latter, those actions are being referred to the Commission for appropriate action. See the last paragraph of this decision.

*Initial Decision of Benjamin A. Theeman, Examiner*

been implemented thereafter by further actions of the Board of Directors and the Funding Committee which subsequently were ratified by the PMA membership. Under these circumstances, there exists an agreement among common carriers and other persons subject to the Act. In order to determine whether Section 15 requires the January 10, 1961 agreement be filed, it is essential first to determine what the agreement is.

The January 10, 1961 agreement came into being as a result of the recommendations of the Work Improvement Fund Committee. This committee according to the testimony of Pres. St. Sure was created in November 1960 for the purpose of considering "the question of a method of collection" of the Mech Fund and then to make "a recommendation as to a method of payment" to the Board of Directors and the PMA membership.

The report when issued was acted upon by the PMA Board of Directors at a meeting on January 6, 1961. The Board adopted the majority report of the Committee except that it did away with the distinction for assessment purposes between general cargo and bulk cargo. The report and the action of the Board of Directors was submitted to the PMA membership for action on January 10, 1961. At that meeting, the PMA membership nullified the change made by the Board of Directors and in effect adopted the majority report of the Committee.

This simply stated is the history of the January 10, 1961 agreement. Under the circumstances, the expression of the January 10, 1961 agreement is found in two documents: The first is the report of the Work Improvement Fund Committee dated January 4, 1961 which includes the majority and minority reports. The Second is the resolution of the Membership dated January 10, 1961. Each is attached herewith marked Appendix I and II respectively.



*Initial Decision of Benjamin A. Theeman, Examiner*

A careful reading of these documents show that they deal solely with "the appropriate method of dividing the costs" of the Mech Fund [23] among the PMA members.<sup>23</sup> Nothing contained in the Committee report or the minutes of the January 10, 1961 meeting indicates that the Committee or the PMA membership in ratifying the majority report had gone or had intended to go beyond that specified area.

There is no substantial evidence to show that the actions of either the PMA membership or the Board of Directors or the Committee after January 10, 1961 was intended to do more than establish a method of assessment of the membership for contributions to the Mech Fund. As directed by the membership the Board of Directors on January 16, 1961 established a Mech Fund rate to be paid by the membership. On January 17, 1961 the membership was notified in detail about the Mech Fund plan and its assessments. Thereafter, the assessment was levied by PMA against its members.<sup>24</sup> There is no substantial evidence to show that the PMA members as such agreed among themselves how this assessment was to be treated after it was made, or that PMA issued any directions to any PMA member as to how it was to handle the assessment after it was made.

The evidence is clear that the tonnage dues assessed by PMA of its membership was in turn charged by the PMA membership to the shipper and the carrier in the rates; and that this had been the practice since the tonnage tax was put into effect. The evidence is also clear that the Work Im-

---

<sup>23</sup> The minority report states the Committee was "charged with recommending methods for allocating among PMA member companies payments due under the ILWU modernization and improvement agreement."

<sup>24</sup> It is found that there is no substantial evidence to support Volkswagen's conclusion that PMA imposed "a non-absorbable charge on this cargo."



*Initial Decision of Benjamin A. Theeman, Examiner*

provement Fund Committee was aware of this fact. There is no substantial evidence to show, however, that either the Board of Directors, the Committee or the PMA membership intended that this custom or practice was to be incorporated in or apply to the Mech Fund charge. Had there been such an intention it would have been reasonable and simple to say so in either the report or the resolution.<sup>25</sup> The chairman of the Work [24] Improvement Committee and the Vice President of Respondents each testified that there was no understanding in the Committee or among the PMA members that the Mech Fund assessment shall be passed on to the customer by the PMA members.

That the January 10, 1961 agreement did not include agreement that the Mech Fund charge was to be passed on by the PMA members seems clear from the actions and events that occurred involving the Respondents and the VW charge. The Respondents admittedly were aware that the Mech Fund charge was their obligation as a PMA member. They also knew that they were "entirely free to absorb assessments" if they so desired. Respondents and other stevedoring contractors expressed their uniform opinion that they could not absorb the Mech Fund and the indications were that it should be passed on to the customer. Thereafter, Respondents and other stevedoring contractors included the whole Mech Fund charge in their rate to Volkswagen. Some time afterward, Respondents entered negotiations with Volkswagen for the establishment of a new rate wherein Respondents would absorb part of the Mech Fund.

---

<sup>25</sup> There is no substantial evidence to show that there was a secret agreement among the PMA membership to that effect. Nor does Volkswagen contend that there was. In their brief, Volkswagen states, "Nor, except as to automobiles, do we see any reason to question the good faith of those who devised the tonnage assessment mechanism and its specific application."

*Initial Decision of Benjamin A. Theeman, Examiner*

This offer Volkswagen rejected. These discussions and actions would have been so much surplusage if the January 10, 1961 agreement had provided that the Mech Fund charge was to be passed on to the customer.

The Mech Fund assessment system has been effective since January 16, 1961. The membership has been adhering to the reporting and payment system. Since that date about \$10,000,000 has been collected. There is no substantial evidence of complaint by any other person than Volkswagen. It is noted that the Board of Directors dealt with requests, in addition to Volkswagen's, as changes in the basis for the assessment on the PMA members. Also, the PMA Board varied the amounts of the assessments as well as the base upon which it was founded. There is no substantial evidence to show that the actions of PMA Board, the Committee or the PMA membership after January 10, 1961 were not consonant with the resolution then adopted.

[25] The foregoing represents a review of (1) the documents constituting the agreement of the PMA members of January 10, 1961 establishing a method of collection and payment of Mech Fund contributions; (2) the events leading to the passage of these resolutions; and (3) the actions of the parties thereafter in carrying out the resolution.<sup>26</sup> Preponderantly, and on the record as a whole, it is found that these actions constituted an agreement among the PMA members establishing a cooperative working arrangement among common carriers and other persons subject to the Act, whereby for Mech Fund purposes, PMA was to assess a contribution on the PMA members according to a tonnage

---

<sup>26</sup> Considerable weight is given to the actions of the parties in carrying out an agreement to determine what was intended. Cf. *Contract Rates—Port of Redwood City*, 2 U.S.M.C. 727, 739 (1945).

*Initial Decision of Benjamin A. Theeman, Examiner*

formula and that the contribution was to be reported and paid to PMA by the membership accordingly.<sup>27</sup>

THE ISSUES

1. Are Respondents considered other persons subject to the Act?

2. Does the cooperative working arrangement of January 10, 1961 entered into by Respondents and other persons subject to the Act as PMA [26] members and their actions taken thereafter pursuant to this arrangement constitute an agreement that must be filed under Section 15 of the Act?

3. Does the action of Respondents in incorporating into their stevedoring rate for Volkswagen the entire amount of

---

<sup>27</sup> Volkswagen does not conclude differently. See Volkswagen opening brief, page 7 where they state that they are not referring to the independent acts of Respondents because "of necessity [they] are the direct results of action taken by PMA." Also page 37, "... respondents by necessity had to increase [their stevedoring] charges pro tanto. Respondents' net profit and that of all stevedores' is less than one dollar per car. Certainly, therefore, respondents could not absorb a \$2.75 or \$2.85 by car measurement ton assessment although they would have been able to assume a weight ton assessment about ten times less than such amount. As respondents' and VW's other terminal contractors had no reason to service this customer at a loss, it was obvious that—with the possible exception of a few cents—the measurement ton assessment had to become part of their rate structure.

Without placing an unduly sinister implication on this, we mention the admission of respondents Vice President that 'all stevedores involved in this case,' i.e., all the stevedore and terminal contractors working for VW, got together and, at least, expressed their "uniform opinion", that they could not absorb and therefore would have to pass on the Fund assessment on Volkswagen automobiles if levied on a measurement ton basis." (Page reference to transcript eliminated).

641a

*Initial Decision of Benjamin A. Theeman, Examiner*

the Mech Fund charge constitute a violation of Sections 16 and 17 of the Act?

DISCUSSION

I. RESPONDENTS ARE OTHER PERSONS SUBJECT TO THE ACT.

Respondents contend that they are not "other person(s) subject" to the Act because they do not carry on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water" within the definition laid down in Section 1 of the Act. This contention is based on two legs: (a) the only movement of VW's in controversy in this proceeding is that on the chartered vessels of Volkswagen, and as to the that movement, Respondents are not supplying facilities "in connection with a common carrier by water"; (b) Volkswagen objects to and complains only about the stevedoring aspect of the services performed by Respondents, and the Commission has never exercised jurisdiction over stevedoring activities.<sup>28</sup>

There is no doubt that Respondents are other persons subject to the Act. Respondents as members of PMA voted with the other members of PMA to approve the January 10, 1961 resolution. At that time they were admittedly furnishing terminal facilities to common carriers by water. At all times herein involved while supplying stevedoring services to the chartered ships of Volkswagen the record shows and Respondents admit they were supplying terminal facilities, not only to Volkswagen, but also to other common carriers.

[27] The Commission and its predecessors have consistently taken jurisdiction over terminal operators under

<sup>28</sup> Citing *California Stevedore & Ballast Co., et al. v. Stockton Port District, et al.*, 7 F.M.C. 75 decided January 26, 1962.

(Initial Decision of Examiner 27)

642a

*Initial Decision of Benjamin A. Theeman, Examiner*

similar circumstances.<sup>29</sup> As terminal operators they are members of conferences whose agreements have been filed with and approved by the Commission. Under all the circumstances herein, it is found that Respondents at all times herein involved are other persons subject to the Act and to the Commission's jurisdiction. Nor would it be considered a bar to the Commission's jurisdiction over Respondents should it prove that a portion of the present proceeding deals with an operation over which the Commission does not or may not have taken jurisdiction.<sup>30</sup>

---

<sup>29</sup> See *Agreements Nos. 8225 and 8225-1, etc.* 5 FMB 648 decided August 6, 1959, affirmed *Greater Baton Rouge Port Commission, et al. v. F.M.B.* 287 F 2d 86 (CA 5) 1961, c.d. 368 U. S. 985 (1962). *International Trading Corporation of Virginia, Inc. v. Fall River Line Pier Inc.* 7 FMC 219, 224-225, decided April 16, 1962. Note also the Commission's full discussion on this subject in *Status of Carloaders and Unloaders* 2 U.S.M.C. 761, 767-770. The principles stated therein are equally applicable here.

<sup>30</sup> See *California Stevedore & Ballast Co. et al. supra* at page 81. Compare the Commission's language in a mimeographed Denial of Motions to Dismiss in Docket No. 1158, *In the Matter of Agreements No. 134-21, etc.* issued April 28, 1964:

While it may in the final analysis prove true that a carrier may operate as both a common carrier and a contract carrier and that we have no jurisdiction over contract carriage this is one of the questions the proceeding was instituted to resolve. Our predecessor, *In the Matter of Agreements 6210, et al.* 2 USMC 166, 170 (1939) held that section 15 of the Shipping Act, 1916 (46 U.S.C. 814) required the disapproval of agreements which result in unreasonable and unjust discrimination or prejudice to a carrier's common carrier service, even though the discriminatory practices result from or are part of the contract phase of the carrier's activities.



*Initial Decision of Benjamin A. Thegman, Examiner*

II. THE COOPERATIVE WORKING ARRANGEMENT  
AMONG PMA MEMBERS REGARDING THE MECH  
FUND DOES NOT CONSTITUTE A SECTION 15  
AGREEMENT.

We have found that the cooperative working arrangement among the PMA and the PMA members is an agreement for the purposes of collecting the sum of \$29,000,000. to pay off the obligation of the PMA members assumed under its agreement with ILWU. We have also found that common [28] carriers by water and other persons subject to the Act including Respondents have entered into a "co-operative working arrangement". Another factor is necessary to permit the conclusion that the agreement in this proceeding is within the purview of Section 15 and as such is required to be filed. That factor is not present here.

The Commission categorically has listed in the following fashion agreements that must be filed under Section 15.<sup>31</sup>

(1) fixing or regulating transportation rates or fares;  
or

(2) giving or receiving special rates, accommodations,  
or other special privileges or advantages, or

(3) controlling, regulating, preventing, or destroying  
competition, or

(4) pooling or apportioning earnings, losses, or traffic,  
or

(5) allotting ports or restricting or otherwise regulat-  
ing the number and character of sailings between ports,  
or

(6) limiting or regulating in any way the volume or  
character of freight or passenger traffic to be carried, or

<sup>31</sup> See *Pacific Coast European Conf.-etc.* 5 FMB 247, 259 (1957).

*Initial Decision of Benjamin A. Theeman, Examiner*

(7) in any manner providing for an exclusive, preferential, or cooperative working arrangement.

There is no question that the agreement herein does not fit any of the first six categories above listed. Taking the seventh category literally, it fits therein.

In light of the fact that Section 15 provides that a common carrier or other person subject to the Act shall file *every agreement* and Volkswagen contends:

... "the collective bargaining, the labor cost, labor charges" are not at all involved in this case. VW has never objected to the agreements reached between PMA and ILWU. On the contrary, it has expressed the opinion that these agreements represent a most impressive and salutary achievement in labor relations.

[29] The Fund assessment is another matter, wholly divorced from labor-management problems. This case would be exactly in the same posture if PMA had made the assessment to raise funds for an office building, for hiring halls or for other facilities for use by its members. Obviously, the distribution of such costs, whether arising out of a labor agreement or out of any other project, is not protected from Commission scrutiny by an exemption, statutory or other.

the question must be resolved whether the particular cooperative working arrangement between PMA members who are common carriers or other persons subject to the Act must be filed under Section 15. The answer must be in the negative.

Examination of previous cases shows none nor has any been cited that bears precisely on this point. It would be idle conjecture to imagine what might be filed with the Commission, if the requirement in Section 15 that every

*Initial Decision of Benjamin A. Theeman, Examiner*

agreement between common carriers and other person subject to the act providing for a cooperative working arrangement were taken literally. Some limitation must be applied.

The Supreme Court has stated that it is the Commission's function "to determine whether any agreement such as is described in the [Act] has actually been made."<sup>32</sup> The Commission early in its history recognized that the words "every agreement" in Section 15 must be circumscribed.<sup>33</sup> The language of the Circuit Court with regard to the Board's approval of Section 15 agreements may if paraphrased be applied with equal weight to filing requirements, i.e., the language of the Act does not look inane to the Board requirement that a business agreement be filed, but to an agreement the aims and purposes of which will bring it within the reach [30] of the section . . .<sup>34</sup> To require the filing of any agreement between carriers and other person subject to the act providing for a "cooperative working arrangement" would be dealing with the language of the Act in an inane fashion. Logically, this would require the filing of the agreement among the PMA members to organize PMA even though the latter corporation was

---

<sup>32</sup> *U. S. Navigation Co. v. Cunard S.S. Co.* 284 U. S. 474; 50 F 2d 83, 90 (CA 2 1931).

<sup>33</sup> See *Section 15 Inquiry*, 1 U.S.S.B. 121 (1927) the Commission determined that "agreements are to be distinguished from the routine of conference activities."; that "a literal interpretation of the word 'every' to include routine operations . . . would result in delays and inconvenience to both carriers and shippers"; that "sending the board . . . circulars and tariffs . . . which contain references only to routine arrangements . . . is not regarded as a filing under section 15 . . ."

<sup>34</sup> *Associated Banning v. F.M.B.* 247 F 2d 557, 560 (CAD.C.) 1957.

*Initial Decision of Benjamin A. Theeman, Examiner*

organized for collective bargaining purposes.<sup>35</sup> Volkswagen, however, does not extend its position that far.

It is not possible to lay down any hard and fast rule concerning the filing of agreements within category 7. Whether this agreement must be filed, or that agreement need ~~not~~ be filed would depend upon the facts and circumstances under which the agreement came into being and the aims and purposes expressed therein. It is possible to lay down some guide lines<sup>36</sup> to indicate which cooperative working arrangements must be filed. Either of two sets of guide lines may serve this purpose.

The Act was formulated for the purpose, among others, of regulating carriers by water engaged in the foreign and interstate commerce of the United States.<sup>37</sup> In other words, the regulation of ocean transportation. Thus, it follows that any cooperative working arrangement dealing with or pertaining to ocean transportation is an agreement that is subject to the Act.<sup>38</sup> By the same token, Section 15 would

---

<sup>35</sup> Cf. *Associated-Banning Co. et al. v. Matson Nav. Co. et al.*, 5 F. M. B. 336, 341 (1957) where the Commission approved an agreement for the formation of Matcinal, "which agreement is little more than evidence of a general intention of the parties to enter the stevedoring, terminal and carloading and unloading business as partners acting through the new corporate entity."

<sup>36</sup> These guide lines of necessity are very flexible. Axiomatically, each case must stand on its own feet.

<sup>37</sup> Preamble to the Shipping Act of 1916.

<sup>38</sup> Undoubtedly it is ocean transportation that former Chairman Morse meant when he testified before the Celler Committee "Any cooperative working arrangement which in my opinion deals with transportation. A cooperative working arrangement which did not deal with transportation in my opinion would not be covered by section 15." See House Report No. 1419, 87th Congress, 2d Session, Report of the Antitrust Subcommittee page 333.



*Initial Decision of Benjamin A. Theeman, Examiner*

not require the filing of [31] cooperative working arrangements that did not pertain to ocean transportation.<sup>39</sup>

Another method would be to apply the rule of ejusdem generis to Section 15. Under this rule the Commission would be required to construe the language: "in any manner providing for an exclusive, preferential, or cooperative working arrangement" coming as it does at the end of a list of practices and arrangements as limited to the practices and arrangements of the same general class as those specifically mentioned in the previous six categories.<sup>40</sup>

---

<sup>39</sup> The Legislative history of the Act supports this statement. Note The Alexander Report filed pursuant to H. Res. 587, 63rd Congress Chapter X pages 281-314; particularly the opening paragraph of Recommendations Relating to Water Carriers Engaged in Foreign Trade at page 415, reading as follows:

The facts contained in the foregoing report show that it is the almost universal practice for steamship lines engaging in the American foreign trade to operate, both on the in-bound and out-bound voyages, under the terms of written agreements, conference arrangements or gentlemen's understandings, which have for their principal purpose the regulation of competition through either (1) the fixing or regulation of rates, (2) the apportionment of traffic by allotting the ports of sailing, restricting the number of sailings, or limiting the volume of freight which certain lines may carry, (3) the pooling of earnings from all or a portion of the traffic, or (4) meeting the competition of non-conference lines.

The language of Section 15 in the 1961 amendment to the Act is the same as that contained in the 1916 Act. The latter was based on the recommendations contained in the Alexander Report. See H.R. #659 dated May 19, 1916, 64th Cong., 1st Session and Senate Report #689 dated July 19, 1916, 64th Cong., 1st Session. See also the language of the Commission: *In re: Pacific Coast Conference* 7 FMC 27 at page 34 (1961).

<sup>40</sup> This concept is not novel. The Commission has already applied the rule of ejusdem generis to Section 16 Second. See *Beaumont Port Commission v. Seatrains Lines, Inc.*, 3 FMB 556, 563 (1951). In the Mech Fund assessment, it is clear that the arrange-



*Initial Decision of Benjamin A. Theeman, Examiner*

Applying either guide line to the cooperative working arrangement between and among the PMA members creation is one that pertains neither to ocean transportation nor to the first six categories listed above. Under these circumstances it is found that the agreement is a cooperative working arrangement without the purview of Section 15 and need not be filed with the [32] Commission even though the parties thereto are common carriers and other persons subject to the Act.<sup>41</sup>

---

<sup>41</sup> Volkswagen concedes that Commission jurisdiction does not extend "to activities of regulated persons unrelated to maritime transportation." See *In the Matter of Wharfage Charges and Practices at Boston*, 2 U.S.M.C. 245 (1940) where it was held that though a railroad company is also a regulated marine terminal operator, it is clear that in handling of cargo on the rails it is not within the scope of the Act. On the other hand, the Commission will take jurisdiction over agreements between persons covered by the Act which deal with matters not covered by the Act, such as brokers, stevedores, and passenger agents when those matters pertain to or deal with marine transportation. See *In re Gulf Brokerage and Forwarding Agreements*, 1 U.S.S.B.B. 533, 534 (brokerage was then not covered by the Act); *California Stevedore & Ballast Co. et al. v. Stockton, etc.* supra (the Commission has not yet declared its jurisdiction over stevedoring); *Investigation of Passenger Steamship Conferences, etc.* Docket #873 decided February 19, 1964, page 23 of mimeographed decision (passenger agents).

*Initial Decision of Benjamin A. Theeman, Examiner*

III. OTHER CONTENTIONS OF THE PARTIES CONCERN-  
ING SECTION 15.<sup>42</sup>

PMA has raised a contention concerning the relationship between labor agreements and the Shipping Act. Volkswagen raises a contention concerning the relationship of Sherman Act case principles to the Shipping Act. Each of these is discussed briefly in this section.

*A. It is unnecessary to determine that the agreement establishing the method of collecting the Mech Fund is part of a labor agreement.*

A major contention by PMA is that the Commission does not have jurisdiction of the agreement establishing the method of collecting the Mech Fund because it is a part of a collective bargaining agreement; that there is a fundamental national policy that the Commission may not [33] butt in to the process of collective bargaining. It is unnecessary that the Commission determine whether the subject agreement is or is not part of a labor agreement. Under the Act the Commission is empowered and directed by Congress to deal with those agreements that come within

---

<sup>42</sup> Volkswagen in its briefs has advanced a contention not previously made either in the courts or during the hearing herein to the effect that the "liner" or "common carrier" interests dominate PMA, particularly in its actions with regard to the Mech Fund assessment; that by reason of the liner dominated interests, PMA "whether acting through its Board of Directors or through its membership meeting, would have at heart primarily the interests of the liners" to the particular detriment of Volkswagen a user of chartered vessels. Without commenting on the significance of this contention, it is found that there is no substantial evidence in the record to support Volkswagen's contention.

*Initial Decision of Benjamin A. Theeman, Examiner*

the purview of the Act.<sup>43</sup> To make a determination that the Agreement is either within or without section 15, the Commission looks to the standards set forth in Section 15.<sup>44</sup> The fact that the agreement (or the parties) may also come within the scope of another statute does not deprive this Commission of jurisdiction.<sup>45</sup> It is in accordance with these precepts which have been announced by the Commission in no uncertain terms<sup>46</sup> that this proceeding has been decided.

*B. Sherman Act prohibitions and their effect on the instant proceeding.*

Volkswagen contends that the agreement here involved is within the purview of Section 15 because it is one "fixing or regulating rates", or "controlling, regulating, preventing or destroying competition." Volkswagen arrives at this conclusion by stating among other things that under the antitrust laws "it is well established that any collective action among competitors having a direct impact on prices

---

<sup>43</sup> See *Far East Conference v. U. S.* 342 U. S. 570 (1952), *U. S. Navigation Co. v. Cunard S.S. Co.*, 284 U. S. 474. Note: Sec. 22 of the Act provides that any person may file with the Commission a complaint setting forth a "violation of this Act . . . (emphasis supplied). Further in the same section the Commission on its own motion is given authority to "investigate any violation of this Act."

<sup>44</sup> See footnote 46.

<sup>45</sup> Cf. *D. J. Roach Inc. v. Albany Port District, et al.*, 5 F.M.B. 333, 334 (1957).

<sup>46</sup> Cf. *Alcoa Steamship Co. v. Cia Anonima Venezolana de Navegacion, et al.* 7 FMC 345, 364 where the Commission stated,

This proceeding lies under Section 15 of the Shipping Act of 1916. This section sets out the standards for approval or disapproval of agreements filed according to its terms. We here apply those standards and no others. We are not concerned here with any promotional provision of the laws, . . .

*Initial Decision of Benjamin A. Theeman, Examiner*

is prohibited.”<sup>47</sup> [34] There appears to be no doubt that the Mech Fund created for each participant a new business expense. How each participant intended to, or did handle that expense is not shown. There is no substantial evidence of any agreement or collective action among the PMA members in that regard.<sup>48</sup> It may be as Volkswagen states that each participant was required “by necessity” to pass the charge on to the customer. If so, then the charge could have been passed on in full, or in a greater or lesser amount. The participant was free to absorb any of the assessment or not, or add a percentage thereon for profit and overhead. This, however, constitutes a matter of business judgment that each participant individually would be required to make. No case has been referred to that declares this type of business action is violative of the anti-trust laws. In any event, in light of the fact that it has been found that the Mech Fund agreement is not required by Section 15 to be filed, and that as found hereafter Respondents have not been shown to have violated Sections 16 and 17 of the Act, it is considered unnecessary in this proceeding to determine whether the actions of Respondents and other PMA members are prohibited under the anti-trust laws.

IV. THE MEASUREMENT TONNAGE ASSESSMENT INCLUDED BY RESPONDENTS IN ITS STEVEDORING RATE DOES NOT DISCRIMINATE AGAINST AUTOMOBILES IN VIOLATION OF SECTION 16 OF THE ACT.

In its opening brief Volkswagen makes the following statement:

---

<sup>47</sup> The cases cited by Volkswagen stand for the proposition that an agreement or concerted action “designed to affect prices” constitutes a violation. See *U. S. v. Gasoline Retailers Ass’n, Inc.*, 285 F 2d 688, 691 (7 CA 1961).

<sup>48</sup> Except possibly as to the group that held the conversation about the inability to absorb the automobile assessment.

*Initial Decision of Benjamin A. Theeman, Examiner*

We do not claim that the measurement formula "regardless of how manifested" subjects Volkswagen automobiles to "prejudice or disadvantage" as compared to other automobiles, and we admit that there is no other cargo classification in competition with automobiles.

Under decisions of predecessor agencies of the Federal Maritime Commission in such cases, section 16 of the Shipping Act, 1916 (46 U. S. C., section 815), has been held inapplicable. *Huber Mfg. Co. v. N. V. Stoomvaart Maatschappij "Nederland,"* 4 F. M. B. 343 (1953); *Paraffine Companies, Inc. v. American-Hawaiian S.S. Co.,* 1 U.S.M.C. 628 (1936); *Johnson Pickett Rope Co. v. Dollar S.S. Lines, Inc., Ltd.,* 1 U.S.S.B. 585 (1936). The Hearing Examiner may consider himself bound by these precedents.

[35] Our only reason for invoking section 16 at this time, accordingly, is to preserve the issue so as to be able to, ask for a reconsideration of the above rulings if this case should reach the Commission itself and also to have it available for possible judicial review.

The facts and circumstances herein substantially support Volkswagen's admission that there is no other cargo classification in competition with automobiles. On the record as a whole it is found that the action of Respondents in including the Mech Fund charge in their stevedoring rate does not constitute undue or unreasonable preference or advantage within the meaning of Section 16 of the Act.



653a

*Initial Decision of Benjamin A. Theeman, Examiner*

V. THE MEASUREMENT TONNAGE ASSESSMENT INCLUDED BY RESPONDENTS IN ITS STEVEDORING RATE FOR AUTOMOBILES IS NOT AN UNJUST AND UNREASONABLE PRACTICE WITHIN THE MEANING OF SECTION 17 OF THE ACT.

Section 17 of the Act requires that a person subject to the Act "shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property."

As stated above, neither PMA nor the agreement between and among PMA members has been found subject to the Act. For that reason we do not comment on the justness or unjustness, reasonability or unreasonability of the actions of PMA or the aims and purposes of that agreement. Volkswagen is complaining about Respondents practice of including the Mech Fund assessment in its stevedoring rate. This discussion concerning Section 17, therefore, deals with the relationship between Respondents and Volkswagen.

Prior to the establishment of the Mech Fund Volkswagen negotiated its rate for discharging VW's with Respondents on what amounts to a cost plus basis. Volkswagen admittedly was aware of each item that went to make up the rate. Volkswagen does not contend that any item included in that rate or the rate charged by Respondents without the Mech Fund Charge was either unjust or unreasonable. Thereafter, Respondents faced with the obligation to pay the Mech Fund assessment decided, at least as [36] to automobiles, to include an equal amount in the rate for handling automobiles. Does this action by Respondents constitute an unjust and unreasonable practice?

There is no contention by Volkswagen or any evidence to show that the inclusion of the Mech Fund charge in Respondent's rate would increase Respondent's profits. As stated above, Volkswagen does not contend that Respondents profits are unjust or unreasonable. There is no doubt

*Initial Decision of Benjamin A. Theeman, Examiner*

that under the circumstances here stated the Mech Fund assessment as included in Respondents' rate constitutes an operating expense applicable to the discharge of automobiles. Volkswagen does not content that the inclusion of an operating expense as such is either improper or unreasonable.

Volkswagen's complaint is addressed in effect solely to the amount of the assessment.<sup>40</sup> Respondents took such action as was available to them to assist Volkswagen. At the latter's request Respondents solicited PMA in an effort to have the basis for the assessment on automobiles changed from measurement to weight or reduced in some other manner. Also Respondents assisted Volkswagen when the latter presented their application for a change to PMA. PMA did not act favorably on this request. Respondents offered to compromise the matter by absorbing a part of the assessment. Volkswagen refused that offer. No case or law has been cited that compels Respondents under these circumstances to absorb the assessment or to refrain from attempting to collect the entire amount from its customer. Precedent for the latter action was well established with regard to the tonnage tax to which Volkswagen never objected even though it was set on a measurement basis.

The evidence shows that the Mech Fund charge was included in the rate charged for all other foreign cars. Volkswagen was not the only [37] shipper to whom the rate applied but Volkswagen is the only shipper that has refused to pay the charge. There is no evidence to show that the other shippers considered unjust or unreasonable the Mech Fund charge inclusion in the rate. Also where VW's were shipped by conference carrier and discharged by Respondents the conference rate was paid. That included the Mech Fund charge.

---

<sup>40</sup> Volkswagen's contention that the Mech Fund charge puts the VW at a competitive disadvantage in relation to other compact cars is given little weight considering the relationship between the Mech Fund charge of about \$2.35 to the selling price of VW's.

655a

*Initial Decision of Benjamin A. Theeman, Examiner*

Volkswagen claims that PMA compels the Respondents to impose this excessive charge for the handling of automobiles in order that PMA may make up for deficiencies in revenue resulting from subsidies for coastwise lumber shipments, as well as, in some degree, from undue benefits bestowed on other cargo generally. Without commenting on the validity of this contention, it is significant that no charge of this nature is levelled against Respondents, nor is there any evidence to show that charges attributable to the handling of other cargo are attempted to be collected by Respondents from Volkswagen.

Under the circumstances in this case it is evident that Respondents as a matter of business expediency included the Mech Fund contribution for automobiles in their stevedoring rate. The result may be a higher rate than Volkswagen may desire to pay. There is insufficient evidence, however, to establish that this practice was either unjust or unreasonable.<sup>50</sup>

ULTIMATE CONCLUSIONS:<sup>51</sup>

On the record as a whole it is found:

(1) The agreement entered into on January 10, 1961 by PMA members who are common carriers and other persons subject to the Act including [38] Respondents constitutes a cooperative working arrangement. It has not been shown that this is an agreement fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing or destroying competi-

<sup>50</sup> Cf. *Evans Cooperage Co. Inc. v. Board of Commissioners of the Port of New Orleans* 6 FMB 415. Note conditions laid down by the Commission in *Nickey Bros., Inc. v. Manila Conference* 5 FMB 467, 476.

<sup>51</sup> Requested findings, conclusions and contentions not discussed in this decision or embraced herein have been considered and are not justified by the record or are unnecessary for the determination of the issues herein.

656a

*Initial Decision of Benjamin A. Theeman, Examiner*

tion; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or dealing with ocean transportation. Accordingly the PMA members subject to the Act were not required to file a copy as provided in Section 15. The non-filing of a copy of said agreement did not and does not constitute a violation of the Act.

(2) Respondents have not been shown to have made or given any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic, or subjected any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever in violation of Section 16 of the Act.

(3) Respondents have not been shown to have established or enforced an unjust or unreasonable practice in violation of Section 17 of the Act.

For the foregoing reasons the complaint should be dismissed.

Evidence in the record indicates that Respondents and other stevedoring contractors may have entered into an agreement some time after January 10, 1961 to the effect that the automobile Mech Fund assessment could not be absorbed and that it should be passed on to the customer in the shipping rate. Such an agreement may well be within the purview of Section 15. The Examiner raised some questions with regard to this matter but was limited by the scope of the complaint hearing. Volkswagen placed no "undue sinister implications" on this agreement and did not attempt to examine into the matter fully. Accordingly, the matter is referred to the Commission for appropriate action.

/s/ Benjamin A. Theeman

BENJAMIN A. THEEMAN,

Presiding Examiner..

Washington, D. C.

June 4, 1964.



## **Appendix I, Annexed to Foregoing Initial Decision**

(Same as Exhibits 5-A and 5-B printed herein at pages 466a to 479a.)

---

## **Appendix II, Annexed to Foregoing Initial Decision**

[3] DETERMINATION AS TO METHOD OF CONTRIBUTION TO ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND: The Chairman reported that the Board of Directors had previously approved the Agreement between the PMA and ILWU of October 18, 1960, but had left the question of the method of contributions to the Fund for membership action.

A Sub-Committee to recommend the method of funding has been working for approximately two months and reported to the Board of Directors at its meeting on January 6, 1961. The Board of Directors after considering the Majority and Minority Report of the Sub-Committee voted: "That the collection of the Fund be based on a tonnage formula with all tonnage being treated equally as to rate for a period of six months, and during this interim further studies will be made on this subject."

Considerable discussion then developed concerning the Majority and Minority recommendations of the Committee and the position of the bulk carriers.

It was regularly moved and seconded that the Majority recommendation of the Committee appointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with the understanding that the method of collection will receive continued [4] study and be presented to the Membership again in six months.

The Chairman explained the three recommendations which had been made:



*Appendix II*

1. *Majority Report* (on which the motion is based)

26 $\frac{3}{4}$ ¢ on general cargo  
5 $\frac{1}{2}$ ¢ on bulk

2. *Minority Report*

10¢ a ton  
12¢ per manhour

3. *Board of Directors*

20¢ a ton

It was further agreed that the Board of Directors would examine and determine the definition of bulk cargoes.

At this time a secret ballot was taken and the vote was polled as follows:

246 yes  
74 no  
21 withheld  
67 absent

Motion carried by a majority of the total voting strength of the Association Membership.

The Chairman announced that the motion would be construed to mean that if a different method of contribution should be adopted 6 months hence, it would not have retro-active application.

**RATIFICATION OF ILWU-PMA AGREEMENT:**

It was moved, seconded and unanimously carried by voice vote that the Agreement of October 18, 1960, between the PMA and ILWU be ratified.

**Complainant's Memorandum of Exceptions to  
Conclusions, Findings and Statements in  
Initial Decision**

(Filed July 31, 1964)

[1a] Volkswagenwerk Aktiengesellschaft ("VW"), complainant, hereby excepts to the following conclusions, findings and statements in the Initial Decision of Examiner Benjamin A. Theeman, dated June 4, 1964:

1. VW excepts to the Examiner's failure to find that automobiles are burdened more heavily than any other cargo by the assessments on the handling of cargo at Pacific coast ports for the Mechanization and Modernization Fund (the "Fund") of intervener, Pacific Maritime Association ("PMA"), which assessments respondents, Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (hereinafter referred to collectively as "MTC"), seek to collect from VW.VW, in particular:

(a) Excepts to the Examiner's failure to find that PMA's Fund assessment, compared with either the total cost of discharge or the total direct labor cost involved in discharge, has an impact on automobiles about ten times as great as upon average general cargo;

(b) Excepts to the Examiner's failure to find that reductions in the Fund assessment with respect to lumber and coastwise trade—bringing the assessment on lumber in this trade to one tenth that on general cargo and one hundredth that on automobiles—were made in order to strengthen the position of PMA member carriers in their competition with outsiders;

(c) Excepts to the Examiner's failure to find that through an assessment on a measurement ton basis the total cost of discharge of VW's automobiles at

*Complainant's Memorandum of Exceptions to Conclusions,  
Findings and Statements in Initial Decision*

United States Pacific coast ports is increased by about 26 percent, while the average increase of the [2a] cost of discharge of all general cargo through PMA's Fund assessment amounts to only a little more than 2 percent; and

(d) Excepts to the Examiner's failure to find that an assessment on a measurement ton basis on automobiles amounts to about 56 percent of the total direct labor cost involved in the discharge of this cargo while the total Fund assessments levied by PMA against its members represent only about 5 percent of their total shoreside direct labor cost.

2. VW excepts to the Examiner's failure to find that the disproportionate assessment of automobiles by PMA for Fund purposes is without any justification. VW, in particular:

(a) Excepts to the Examiner's failure to find that PMA levies the Fund assessment for all types of cargo other than automobiles according to the manner in which such cargo happened to be manifested in 1959, and that as to automobiles PMA introduced an assessment practice different from that used for all other cargo, inasmuch as it provided that assessments on automobiles should be made in all cases on a measurement ton basis;

(b) Excepts to the Examiner's failure to find that there was not in 1959 and there is not at this time any uniform practice with respect to the manifesting of automobiles, except that automobiles were and are manifested and freighted in the intercoastal and coastwise trade consistently on a weight basis and except that shipments of VW's vehicles and

*Complainant's Memorandum of Exceptions to Conclusions,  
Findings and Statements in Initial Decision*

other automobiles in the foreign trade were and are manifested and freighted most frequently on the basis of the number of units, with an additional indication of weight and, in some instances, of measurement;

[3a] (c) Excepts to the Examiner's failure to find that a measurement assessment on automobiles is particularly inappropriate with respect to the Fund, which involves stevedoring and terminal operations, since measurement has no significant relation to the amount of labor required in the handling of automobiles;

(d) Excepts to the Examiner's failure to find that the discharge at United States Pacific coast ports of automobiles in general and of VW's automobiles in particular was not benefited more, and was probably benefited less, than the discharge of general cargo on the average by the concessions which the International Longshoremen's and Warehousemen's Union made in return for the creation of the Fund;

(e) Excepts to the Examiner's failure to find that the economic effect of PMA's attempted measurement ton assessment on automobiles is to burden the stevedoring and terminal handling of automobiles with substantial expenses which actually relate to the stevedoring and terminal handling of other types of cargo; and

(f) Excepts to the Examiner's statements that (i) the charges for stevedoring of automobiles were on a measurement ton basis, (ii) tonnage membership dues to PMA were reported and paid on that basis and (iii) precedent for collecting the Fund assess-

*Complainant's Memorandum of Exceptions to Conclusions,  
Findings and Statements in Initial Decision*

ment from VW on a measurement basis was well established by the tonnage membership dues.

3. VW (a) excepts to the Examiner's failure to find that through the Fund assessment on automobiles, PMA imposed on automobiles in general and on VW's automobiles in particular a charge which could not be absorbed by MTC and (b) excepts to the Examiner's statement that there is no substantial evidence to support VW's contention [4a] that PMA imposed a non-absorbable charge on VW's cargo.

4. VW excepts to the Examiner's failure to find that liner interests dominate over stevedoring and terminal operator interests both in the Board of Directors and in membership meetings of PMA, and that PMA acted in the interest of the liners with respect to the Fund assessment. VW, in particular:

(a) Excepts to the Examiner's failure to find that the by-laws of PMA provide for the election of twenty-one directors comprising at least thirteen representatives of shipping lines;

(b) Excepts to the Examiner's failure to find that of the remaining eight members of PMA's Board of Directors, four are elected through area membership meetings and four are representatives of stevedoring firms and terminal operators, the latter being elected with the votes also of those members who are both steamship operators and stevedoring contractors;

(c) Excepts to the Examiner's failure to find that PMA's by-laws further contain provisions for voting at membership meetings which result in a large



*Complainant's Memorandum of Exceptions to Conclusions,  
Findings and Statements in Initial Decision*

majority of the votes being held by liner interests and a small minority of the votes being held by stevedoring and terminal operator interests;

(d) Excepts to the Examiner's statement that there is no substantial evidence in the record to support VW's contention to the effect that the liner or common carrier interests dominate PMA, particularly in its actions with regard to the Fund assessment and that by reason of such domination PMA, whether acting through its Board of Directors or through membership meetings, would have at heart [5a] primarily the interests of the liners to the particular detriment of VW, a user of chartered vessels:

(e) Excepts to the Examiner's failure to find that in imposing and maintaining the Fund assessment the liner interests dominating PMA deliberately shifted a burden from their own operations to VW's automobiles, a cargo which predominantly uses a method of transportation in competition with liners, i.e., chartered vessels; and

(f) Excepts to the Examiner's statement that the reason why the proposal for assessment of automobiles on a unit basis was considered unacceptable by PMA's second Funding Committee was because of the undesirable effect it would have on the overall Fund program rather than because it would adversely affect liner interests.

5. VW excepts to the Examiner's statements that agreements effected through corporate action of PMA are not subject to the Shipping Act, 1916 (the "Act").

*Complainant's Memorandum of Exceptions to Conclusions,  
Findings and Statements in Initial Decision*

6. VW excepts to the Examiner's conclusion, and to all statements of the Examiner in support of this conclusion, that the cooperative working arrangement found to have been made among members of PMA, including MTC, is not subject to section 15 of the Act.

7. VW excepts to the Examiner's conclusion, and to all statements of the Examiner in support of this conclusion, that MTC and the other members of PMA have not been shown to have made or given any undue or unreasonable preference or advantage to any particular person, locality or description of traffic, or subjected any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in violation of section 16 of the Act.

[6a] 8. VW excepts to the Examiner's conclusion and to all statements of the Examiner in support of this conclusion, that MTC and the other members of PMA have not been shown to have established, observed or enforced an unjust or unreasonable practice in violation of section 17 of the Act.

9. VW excepts to the Examiner's statement that VW's proposed Findings of Fact submitted to the Examiner numbered 21 (second sentence), 23, 24 (second sentence), 26, 27, 29, 35, 37, 38, 39 and 40 and VW's proposed Conclusions of Law submitted to the Examiner numbered 3 through 7, inclusive, are not justified by the record or are unnecessary for the determination of the issues herein.

(Exceptions of Respondents to Initial Decision 1-2)

665a

**Exceptions and Brief in Support of Exceptions of  
Respondents Marine Terminals Corporation and  
Marine Terminals Corporation (of Los Angeles)**

(Filed August 3, 1964)

**[1] BEFORE THE  
FEDERAL MARITIME COMMISSION**

---

**[SAME TITLE]**

---

Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), respondents in Docket No. 1089, except to the initial decision of the Examiner, dated June 4, 1964, in the following respects:

*Exception No. 1: To the statement:*

"As more fully discussed hereafter, Respondents operate terminal facilities in the respective ports and are clearly 'other persons' subject to the Act" (Initial Decision "I.D.", 4-5)

*Exception No. 2: To the statement:*

[2] "There is no doubt that Respondents are other persons subject to the Act. Respondents as members of PMA voted with the other members of PMA to approve the January 10, 1961 resolution. At that time they were admittedly furnishing terminal facilities to common carriers by water. At all times herein involved while supplying stevedoring services to the chartered ships of Volkswagen the record shows and Respondents admit they were supplying terminal facilities, not only to Volkswagen, but also to other common carriers." (I.D., 26)

↔ 666a

*Report of the Commission*

*Exception No. 3: To the statement:*

“Evidence in the record indicates that Respondents and other stevedoring contractors may have entered into an agreement some time after January 10, 1961 to the effect that the automobile Mech Fund assessment could not be absorbed and that it should be passed on to the customer in the shipping rate. Such an agreement may well be within the purview of Section 15.” (I.D., 38)

\* \* \*

---

**Report of the Commission**

(Filed October 13, 1965)

**[1] FEDERAL MARITIME COMMISSION**

---

No. 1089

**VOLKSWAGENWERK AKTIENGESELLSCHAFT**

v.

**MARINE TERMINALS CORPORATION, ET AL.**

---

Agreement between members of Pacific Marine Association, including respondents, establishing the method of assessing and collecting contributions to pay their obligation under an agreement with the International Longshoremen's and Warehousemen's Union found not subject to section 15 of the Shipping Act, 1916.

*Report of the Commission*

Respondents' having included the assessment in its entirety in their rate to Volkswagen for discharging automobiles found not to have violated sections 16 and 17 of the Act.

*Stanley S. Madden and Walter Herzfeld*, attorneys for Volkswagenwerk Aktiengesellschaft, complainant.

*Bryant K. Zimmerman*, attorney for Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), respondents.

*Edward D. Ransom and Gary J. Torre*, attorneys for Pacific Marine Association, intervener.

BY THE COMMISSION: (John Harlee, Chairman; Ashton C. Barrett and James V. Day, Commissioners.)

This proceeding arises out of a complaint filed by Volkswagenwerk Aktiengesellschaft (Volkswagen or VW) involving the payment of certain charges imposed by respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), for services rendered in discharging complainant's automobiles at respondents' terminals in San Francisco and Los Angeles.

Pacific Marine Association (PMA), a corporation composed of carriers, marine terminal operators and stevedore contractors on the Pacific Coast, which acted as collective bargaining unit for these groups in their negotiations with the International Longshoremen's and Warehousemen's Union (ILWU), intervened. Respondents are members of PMA.

An Initial Decision was issued by Examiner Benjamin A. Theeman, exceptions and replies thereto were filed, and oral argument was heard.



*Report of the Commission*

[2] FACTS

Beginning in 1957 ILWU and PMA entered into a series of negotiations in an attempt to correct some of the inefficient practices that were prevalent in stevedoring on the Pacific Coast and to allow for the introduction by employers of labor saving devices in connection with the work of cargo handling. In return for this concession to management, the workers were to share in the savings made possible by the reduction in wage costs.

On August 10, 1959, PMA entered into an agreement with ILWU to raise a \$11½ million dollar fund for the benefit of the work force. The agreement did not state how the sum was to be raised, but it was accumulated by PMA's assessing its members on a man-hour basis. The fund, called "Mechanization and Modernization" fund (hereinafter "Mech" fund) was subsequently expanded to \$29,000,000 to be accumulated over a 5½ year period by an agreement entered into between ILWU and PMA, subject to ratification by their respective memberships, on October 18, 1960. The method of collecting the fund from the PMA membership was reserved to PMA.

In January 1961, a committee of PMA studied alternative methods of assessing members for collection of the "Mech" fund. The majority of the committee recommended that all members be assessed on a straight percentage of tonnage carried with bulk cargoes assessed at 1/5 the general cargo rate as was the practice with respect to the assessment of a part of the PMA dues. This determination was based upon the feeling that an assessment geared to "man-hours" would unfairly result in least assessing those who had profited most from new and improved cargo handling methods. A minority report recommended a combined man-hour/tonnage method of assessment, as was made with respect to PMA dues. The minority reasoned that such a formula would not unduly favor

*Report of the Commission*

those who would save most in man-hours. At the same time it would not unduly penalize those who would benefit most from the elimination of restrictive work practices. The majority position was adopted by PMA.

On November 15, 1961, a "Supplemental Agreement" effective January 1, 1961, was executed by ILWU and PMA ratifying the agreement of October 18, 1960.

[3] The tonnage formula has remained in effect since January 16, 1961, when payment to the fund began, although the amounts were increased in December 1961, from  $27\frac{1}{2}\text{¢/ton}$  to  $28\frac{1}{2}\text{¢/ton}$  on general cargo and  $51\frac{1}{2}\text{¢/ton}$  to  $9\text{¢/ton}$  on bulk cargo. An additional assessment of members based on 15 cents per clerk-man-hour was made at this December meeting and was added by respondents to their charges against VW which bore it without protest.

Subsequently, in July 1962, the rate of assessment on coastwise lumber was reduced to  $5\text{¢/ton}$  on the theory that such cargo was already subjected to penalty handling rates of \$1.00/hr. straight time and \$1.50/hr. overtime.

Volkswagen had persistently refused to pay respondents "Mech" fund assessments which they here found necessary to pass on to it in order to carry on their operations on a profitable basis. The vast majority of the carrying of Volkswagen on the Pacific Coast (75 percent) are by vessels chartered by VW, and at the terminals of respondents 90 percent of all autos unloaded are those of complainant. A common carrier carrying complainant's autos, Wallenius Line, also protested and refused to pay the "Mech" fund assessments passed on to it.

Respondents and other terminal operators sought to have the form of assessment on automobiles modified. PMA had required the automobile tonnage assessment to be based upon measurement tons, rather than weight tons, regardless of how manifested. There is no uniform way of manifesting automobiles. In the foreign trades they

*Report of the Commission*

are manifested on a unit basis on chartered ships, but weight and sometimes measurement is shown. On common carriers both weight and measurement are shown. Tariffs are on a unit basis but dependent upon measurement. In the coastwise trades, autos are manifested and freighted by weight. General cargo is assessed as manifested. This form of assessment increased Volkswagen's cost of discharge some 25 percent. The tonnage portion of the dues of respondents on automobiles had, since 1958, been assessed on a measurement ton basis.

[4] At the PMA meetings of January 1961, respondents expressed their opinion that it would be impossible for them to absorb the "Mech" fund assessments, and it appears that the stevedore members of the PMA in general felt that they could not absorb the whole assessment. Although some stevedores indicated that it might be necessary to pass on the assessment in the stevedoring rate to their customers, several witnesses, both for respondents and PMA, testified that there was no understanding among the PMA members as to whether the assessment would be passed on to the customers or absorbed by the members themselves.

The Funding Committee of PMA in February 1961, reaffirmed its position with respect to automobiles, and this was adopted by the Board of Directors in March of 1961.

Several stevedores, including respondents, attacked the method of assessing automobiles as arbitrary and suggested a unit method of assessment. The Funding Committee rejected the proposal in December 1961, and the rejection was affirmed by PMA in March 1962.

Respondents concede that the method of assessment against automobiles on a tonnage basis is unfair, as stevedoring of cars has always been an efficient and economical operation, and testimony in the record shows that there is little likelihood of mechanical improvement in the method of unloading automobiles, and auto shippers will probably

671a

*Report of the Commission*

receive only general benefits from the fund plan, such as freedom from strikes or slowdown.

Aware of Volkswagen's dissatisfaction, respondents some time afterward offered Volkswagen a lower rate whereby respondents would absorb an amount equal to that if the assessment had been made on a weight ton basis. Volkswagen rejected this offer and stated it would not pay the "Mech" fund charge in the rate if it were based on a measurement ton basis. Since Volkswagen was satisfied with respondents' discharging operations, Volkswagen continued to use them.

[5] Testimony indicates that stevedore members of PMA passed on the "Mech" fund assessments to common carrier members of PMA. The record also indicates that these carriers in turn absorbed the increases as it was stated that there was no increase in ocean freight rates due to the passing on to the carriers of the "Mech" fund assessments.

Some terminal operators may have absorbed the assessments in whole or in part, rather than pass them on to shippers when the services were performed directly for the shippers rather than for the common carriers. There is no showing as to the level of rates for terminal services charged by PMA members either before or after the establishment of the "Mech" fund.

PMA filed a libel against respondents in the United States District Court for the Northern District of California, Southern Division, demanding payment of unpaid "Mech" fund contributions from each respondent as a PMA member. By respondents' interpleader, Volkswagen was made a party to the Court action. Upon Volkswagen's request the Court stayed the proceedings therein, pending submission of the following issues to the Commission for determination:

1. Whether the assessments claimed from [Volkswagen] are being claimed pursuant to an



*Report of the Commission*

agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U. S. C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.

2. Whether the assessments claimed from [Volkswagen] result in subjecting the automobile cargoes of [Volkswagen] to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U. S. C. 815 (1961).

[6] 3. Whether the assessments claimed from [Volkswagen] constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U. S. C. 816 (1961).

Thereafter Volkswagen filed the complaint in this proceeding alleging that respondents, other PMA members and PMA had conspired or agreed to impose an extra charge on Volkswagen for terminal services in discharging VW's in violation of sections 15, 16 and 17 of the Act.

THE EXAMINER'S DECISION

The Examiner found that respondents, as parties to car-loading conferences approved by the Commission and operators of terminal facilities were "other persons" subject to the Shipping Act, 1916. He further found that the "Mech" fund agreement which respondents had entered into with the other members of PMA, all of whom he found to be common carriers or "other persons" subject to the Act, was a "cooperative working arrangement." He concluded, however, that as the agreement contained no obligation upon the members of PMA to pass the "Mech" fund assessments on to shippers, the agreement was not the type



*Report of the Commission*

of "cooperative working arrangement" intended to be included within section 15 as it did not "deal with" or "pertain to" "ocean transportation" and was not one of "the same general class" as the six categories of agreements specifically enumerated in section 15.<sup>1</sup> He therefore found no violation of section 15 in PMA's failure to file its "Mech" fund agreement.

[7] The Examiner found no violation of section 16 as no "prejudice or disadvantage" to VW was shown by the method of assessment as all cars were assessed by the measurement formula.

The Examiner found no "unreasonable practice" under section 17 to exist with reference to the respondents' handling of Volkswagens as all autos were assessed on the same basis, Volkswagen never objected to the portion of the dues which was assessed on a measurement basis, and passed on to it, and respondents had offered to compromise the matter by absorbing a part of the assessment.

DISCUSSION AND CONCLUSIONS

We have reviewed the exceptions of Volkswagen to the Initial Decision of the Examiner. Even if we assume all of the members of PMA are "other persons" within the meaning of the Shipping Act, 1916, we find nothing in the agreements of record in this proceeding which brings them within the purview of section 15.

Although the literal language of section 15 is broad enough to encompass any "cooperative working arrange-

<sup>1</sup> These are agreements "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried. . . ."

*Report of the Commission*

ment" entered into by persons subject to the Act, the legislative history is clear that the statute was intended by Congress to apply only to those agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public or their representatives.<sup>2</sup> *D. J. Roach Inc. v. Albany Port District et al.*, 5 FMB 333, 335.

Thus, for example, while agreements of persons subject to the Act to pool secretarial workers or share office space may literally be "cooperative working arrangements," they are not the type of agreements which affect competition by the parties in vying to serve outsiders and hence are not [8] subject to section 15. On the other hand, agreements relating to the method of fixing or determining the levels of rates, fares, charges or commissions paid to or by shippers, passengers, forwarders, brokers, agents, etc., have the type of competitive relationship to bring them within the scope of section 15.

As the courts have pointed out, our statute "... In its general scope and purpose, as well as its terms, ... closely parallels the Interstate Commerce Act; and we cannot escape the conclusion that Congress intended that the two acts, each in its own field, should have like interpretation, application and effect. It follows that settled construction in respect of the earlier act must be applied to the later one, unless, in particular instances, there be something peculiar in the questions under consideration, or dissimilarity in the terms of the act relating thereto, requiring a

---

<sup>2</sup> Recommendations of the "Alexander Committee," Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations under H. Res. 587, p. 415, *et seq.*—See also Hearings before the Special Subcommittee on Steamship Conferences of the Committee on Merchant Marine and Fisheries, on H.R. 4299, 87th Cong., 1st Ses. (1961) at page 428.

*Report of the Commission*

different conclusion." *United States Navigation Company, Inc. v. Cunard Steamship Co., Ltd.*, 284 U. S. 474.

Section 5(1) of the Interstate Commerce Act (49 U. S. C. 5) provides for jurisdiction of the ICC over "Combinations and consolidations of carriers" establishing "Pooling, division of traffic, service, or earnings."

The courts, in construing this section, have determined that agreements which affect only labor-management relations do not come within its scope. A showing has been required, before labor-management agreements have been held to be subject to the jurisdiction of the ICC, that they have some impact upon the competitive relationship of those entering into them. "Section 5(1) empowers the Commission to exempt pools from the prohibition of the statute which it determines will not unduly restrain competition and will result in better service to the public or economy in operation, the broad sweep of the section does not encompass pools whose sole concern is labor-management relations." *Kennedy v. Long Island Railroad*, 211 F. Supp. 478, 489 (1962), affd. 319 F. 2d 366 (2d Cir. 1962).

It is not contested that the membership of PMA entered into an agreement as to the manner of assessing its own membership for the collection of the "Mech" fund. Such an agreement, however, does not fall within the [9] confines of section 15 as, standing by itself, it has no impact upon outsiders. What must be demonstrated before a section 15 agreement may be said to exist is that there was an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators.

The record is devoid of evidence showing the existence of such an additional agreement. The record at most shows that some stevedores expressed the opinion that it might be necessary to pass on the assessment in the stevedoring rate to their customers. That these opinions were the basis for an agreement as to the manner of assessing their customers

*Report of the Commission*

is denied by statements of witnesses for both PMA and respondents. Such conclusion is further vitiated by the actions of respondent and perhaps other terminal operators, who were willing to absorb a part of the assessment.

To hold that a section 15 agreement existed on this record would require us to disregard explicit statements to the contrary as well as actions on the part of both the common carrier members of PMA and respondents inconsistent with the existence of such an agreement. We would moreover, be obliged to reach the anomalous result of finding an agreement in spite of both testimony and conduct negating such an agreement, and then finding that such conduct was a breach of the agreement. It seems much more logical and less contrived simply to conclude that there was no agreement on the part of the PMA members to pass on the "Mech" fund assessments.

We conclude, therefore, that no violation of section 15 has been shown.

Volkswagen itself admits that all of the relevant case law requires a showing that competitive cargo has been preferred to sustain an allegation of a violation of section 16. It further admits that its automobiles have not been subjected to "prejudice or disadvantage" as compared to other automobiles, and that "there is no other cargo classification in competition with automobiles." We therefore uphold the Examiner in finding no violation of section 16.

[10] Complainant's allegation of a violation of section 17 is that the passing on by respondents of the "Mech" fund assessment on automobiles on a measurement rather than a weight basis constituted an "unreasonable practice . . . relating to . . . the handling of property." It does not contest the propriety of the passing on of the assessment to it and states that the alleged discrimination would be removed if the assessment were made on a weight or unit basis.



*Report of the Commission*

It is true that the assessing of automobiles on a measurement basis results in an assessment ten times as great as would result from a weight basis, and that although other cargo is assessed as manifested, automobiles are always assessed on a measurement basis. It is further true that although the assessment on a measurement basis for some general cargo items exceeds the amount computed on a weight basis, in no instance is the difference as great as on automobiles, and that as there is little likelihood of mechanical improvement in the method of unloading automobiles, auto shippers will probably receive only general benefits from the fund plan, such as freedom from strikes or slowdown.

However, as complainant admits, there is no statutory requirement that all users of a facility be assessed equally. As long as "substantial benefits" are provided for one against whom a charge is levied, we will not normally declare the charge unlawful. *Evans Cooperage Co., Inc. v. Board of Commissioners*, 6 F.M.C. 415. The fact that the benefits may differ to some extent in both kind and degree is not material. An exception to the above principle might arise if it could be shown that the leviers of a charge imposed it in an unequal fashion because of a design deliberately to burden one of the users of its service more than another.

The assessment here, however, has been levied in its present form because it was necessary in the business judgment of respondents to do so. The reasonableness of respondents' activities is attested to by the additional facts that they have sought to change the method of "Mech" fund [11] assessment on automobiles, have offered to pass on only a part of the assessment, and have levied a part of their dues assessment against Volkswagen for several years upon the same measurement basis without protest.



*Report of the Commission*

We agree with the Examiner that there has been no showing that the assessment against Volkswagen is an "unreasonable practice" within the meaning of section 17.

The complaint is dismissed.

**Commissioner John S. Patterson dissenting:**

Based on the record before me in this proceeding, my conclusions are as follows:

1. Respondents Marine Terminals have failed to file immediately (a) an agreement with common carriers by water and other persons regulating transportation rates and controlling and regulating competition among each other and (b) any memorandum of a cooperative working arrangement on the aforesaid subjects in violation of Sec. 15 of the Act. (Findings 1, 2, 3, 4 and 5)

2. Respondents Marine Terminals in conjunction with common carriers by water and other persons indirectly have subjected property and persons to undue and unreasonable prejudice and disadvantage in violation of Sec. 16 of the Act. (Findings 1, 2, and 6)

3. Respondents Marine Terminals have failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property contrary to Sec. 17 of the Act. (Findings 1, 2, and 7)

[12] As regards the conclusions stated above, the reasons in support of them and my dissent are advanced as follows:

**INTRODUCTION**

This proceeding was initiated by a complaint by Volkswagenwerk Aktiengesellschaft (VW) against Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (both referred to as "Marine Terminals"), alleging that Respondents Marine Terminals were parties

*Report of the Commission*

to an agreement with certain persons identified as both common carriers by water and other operators of terminal facilities to impose an "extra charge" for terminal facilities, including stevedoring and other terminal services. The "extra charge" was for the purpose of collecting "an assessment" imposed on Respondents by Pacific Maritime Association, of which Respondents are members, for contributions pursuant to a Supplemental Agreement on Modernization and Mechanization as hereinafter described.

The agreement to collect the extra charge was claimed to be subject to Sec. 15 of the Shipping Act, 1916 (Act), providing:

"That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; . . . controlling, regulating, preventing, or destroying competition; . . . or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements."

Even after the agreement is filed pursuant to the first paragraph of Sec. 15, it is further claimed it may not be approved [13] pursuant to the second paragraph of Sec. 15 because the agreement is "unjustly discriminating and unfair as between shippers and importers, operates to the detriment of the commerce of the United States, is contrary to the public interest," (Complaint, VI), "subjects complainant and its automobile cargoes to undue and unreasonable prejudice and disadvantage" (Complaint, VII),

*Report of the Commission*

and "by establishing regulations and practices which are not just and reasonable" (Complaint, X. (5)), is contrary to law in violation of Secs. 15, 16, and 17 of the Act.

The complaint originated in response to an order of November 29, 1962, by the District Court for the Northern District of California, Southern Division, No. 28599 in Admiralty, granting a motion for a "Stay of Proceedings" on a libel petition on condition that there be a "submission to the Federal Maritime Commission and final determination by it, or by a court of last resort upon appeal from such Commission action" of the following issues:

"1. Whether the assessments claimed from respondent impleaded are being claimed pursuant to an agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U. S. C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.

"2. Whether the assessments claimed from respondent impleaded result in subjecting the automobile cargoes of respondent impleaded to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U. S. C. 815 (1961).

"3. Whether the assessments claimed from respondent impleaded constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U. S. C. 816 (1961)."

[14] The Admiralty proceeding was initiated by the Pacific Maritime Association as a Libelant against Marine Terminals as one of the Respondents for refusal to pay

*Report of the Commission*

\$67,004.27 assessments of contributions to a Mechanization and Modernization Fund created pursuant to the Supplemental Modernization Agreement. Marine Terminals petitioned to implead Volkswagen, stating the reason Marine Terminals had not made the assessed contributions was that VW contends that assessments under the Supplemental Agreement and Modernization and Mechanization "are unlawful and that neither libelant nor respondents can lawfully collect assessments pursuant to said Agreement". VW was impleaded and thereafter filed its complaint with us.

Pacific Maritime Association (PMA), which describes itself as "a non-profit association existing under the laws of the State of California", filed a petition to intervene in opposition to the complaint. The petition was granted.

The majority has dismissed the complaint and decided the Examiner should be upheld in finding no violation of Secs. 16 and 17 of the Act.

My dissent to the dismissal is set forth in the following facts, findings, and discussion in support of the findings and conclusions.

**FACTS**

Because the content of facts as stated in the majority report are considered to be too meager a basis for decision, it is deemed essential to expand the scope of facts by advancing from the record before me the following 29 adequate statements [15] of fact upon which my findings and ultimate conclusions are grounded.

1. Complainant VW is a shipper of automobiles from the Federal Republic of Germany through United States Pacific Coast ports. Automobiles are shipped on both chartered ships in private carriage and on "liners" which are the same as common carriage. The number of VW automobiles imported through Pacific Coast ports during 1961 and 1962 were as follows:



*Report of the Commission*

|      | <i>Common Carrier<br/>(Liners)</i> | <i>Private Carrier<br/>(Charter)</i> |
|------|------------------------------------|--------------------------------------|
| 1961 | 9,363                              | 29,111                               |
| 1962 | 13,672                             | 28,296                               |

(Ex. 52)

2. Respondents Marine Terminals are in the business of furnishing ship loading and unloading and storage activities in their terminal facilities located at San Francisco and Long Beach, California (Tr., 202-206). Facilities are available and furnished to both common and private carriers (Tr., 203-204), but about 90% of Respondents' work is in connection with common carriers. (Tr., 236) Marine Terminals have provided facilities for VW since 1954 at both San Francisco and Long Beach. (Tr., 203-204)

3. a. Marine Terminals furnish the following to VW in connection with both common and private carrier by water shipments:

- (1) unlash and unchecking cars;
- (2) removal of cars from ship to pier by means of a patent bridle device to pick up vehicles from the hold;

[16] (3) removal from shipside to storage area by means of tractors which push or pull, using special hooks, vehicles to the point of rest in the storage area; (Tr., 229-231)

(4) guard service, cleaning, lighting, heating, and maintenance of the terminal area; (Tr., 251-252)

(5) fenced-in storage areas where vehicles are surveyed, sorted into dealer lots, and made avail-



*Report of the Commission*

able for inland transportation by trucks. (Tr., 207, 231)  
(Exh. 51)

The unloading services are performed by groups of laborers called "gangs" composed of ILWU members working both aboard the ship and on terminal property. (Tr., 207-208, 211) The men working on the docks are called the "dock gangs". They haul automobiles from the ship's side and sort the automobiles. The gangs working exclusively aboard the ships perform what is called the "function of the ship". (Tr., 206-207). Marine Terminals charged VW \$10.45 per vehicle for the above services, regardless of model, size, or weight, during the period covered by the record. (Tr., 205, 207, 210, 214, 279)

b. A typical "work order" called for the following to be covered by charges:

"(1) Opening and closing of hatches, rigging and unrigging, opening of cardeck hatches.

"(2) Unlashing and unchocking of cars (Hercules round-lashings not to be cut but to be collected on board for further use).

"(3) Waiting time of 30 minutes or less whether in stevedores' control or not, but breakdown of ship's gear excepted.

[17] "(4) Travel-time and transportation of long-shoremen and equipment to and from vessel.

"(5) Supply of discharging gear in accordance with Volkswagenwerk instructions.

"(6) 10 days free storage.

"(7) The stevedores will provide all necessary stevedoring labor including winchmen, hatch tenders,

*Report of the Commission*

tractor operators, also foremen and such other stevedore supervision as is needed for the proper and efficient conduct of work.

“(8) Checking, clerking and supercargo.

“(9) Public liability and property damage insurance, including third party risk, in respect of injuries arising from stevedoring operations, also taxes and Pacific Maritime Association assessments.

“(10) For handling cars from ship's tackle to place of rest \$6,—per car are to be collected from consignees and credited to vessel within the disbursements account.

“REMARKS:

Wharfage on cars at \$3,—per 2,000 lbs for uncrated cars to be for consignees' account.”

(Exh. 51)

4. a. Marine Terminals is a member of PMA, intervenor herein, an association incorporated June 3, 1949, composed of members meeting the following qualifications as shown in its By-Laws as amended to April 1960 (Exh. 3), Article IV, Section 1:

“Section 1. Any firm, person, association or corporation engaged in the business of carrying passengers or cargo by water to or from any port on the Pacific Coast of the United States (except Alaskan ports), or any agent of any such firm, person, association or corporation, and any firm, person, association or corporation employing longshoremen or other shoreside employees in operations at docks or marine terminals at any such port and any association or corporation composed of employers of such longshoremen or other shoreside employees

*Report of the Commission*

shall be eligible for membership in this corporation."

The record shows 116 members meeting these qualifications for the year 1961. (Exh. 47—"Membership Roster")

[18] b. Intervenor PMA includes in its membership several common carriers by water such as American President Lines, Ltd., American Mail Line, Ltd., Matson Navigation Company, Pacific Far East Line, Inc., States Steamship Company, and United States Lines Company as ~~American-flag carriers and many foreign-flag common carriers by water.~~ (Exh. 47)

5. The corporate powers of PMA are "vested in and exercised, conducted and controlled by a Board of twenty-one (21) Directors, who need not be members of the corporation". Art. I) Among PMA's powers is the power to "levy and assess and collect . . . dues or assessments . . ." not in excess of a maximum rate to be fixed at a regular or special meeting. (Art. III, Sec. 1(e))

6. A Memorandum of Agreement on Mechanization and Modernization of October 18, 1960 (Exh. 1 sub B) between PMA and the ILWU provided that PMA would "establish a jointly trustee Fund" (par. 38) to include specified amounts to be accumulated (par. 39). The purposes for which accumulations in the fund were to be used were stated (pars. 40-42). The terms of the Memorandum of Agreement were incorporated in a superseding "ILWU-PMA Supplemental Agreement on Mechanization and Modernization" (Modernization Agreement) entered into as of the 1st day of January 1961, signed for the Union on November 15, 1961, by Harry Bridges and for the Association by J. Paul St. Sure. The Fund provisions are as follows:

*Report of the Commission*

"1. *Amount and Rate of Accumulation.* Commencing January 1, 1961, and continuing for a period of five and one-half years ending June 30, 1966, a Mechanization [19] Fund shall be established, subject to the provisions of Section 3 of Article V hereof, at the rate of Six Million Five Hundred Thousand Dollars (\$6,500,000) during the first year, Five Million Dollars (\$5,000,000) during each of the next four years, and Two Million Five Hundred Thousand Dollars (\$2,500,000) during the next succeeding six months, for a total of but not exceeding Twenty-nine Million Dollars (\$29,000,000)." (Exh. I, Sub C, Art. II, par. 1)

7. The Modernization Agreement provides, with regard to contributions to raise the above amounts, "Principals who are Member Companies shall be responsible therefor to the extent the Association determines pursuant to its by-laws and in its sole discretion." (Id., Art. II, par. 2) Member Companies are defined in Art. I as companies who are members of the Association and are subject to several specified collective bargaining agreements "respecting employment of Employees." The "Association" referred to is PMA. (Id., Art. I, pars. 2 and 3) "Principals" are member companies "who do not employ directly Employees but who obtain stevedoring, terminal or similar related services under contracts . . .". (Id., Art. I, par. 6) "Contributions" are assessments required under "arrangements adopted by the Association, pursuant to its by-laws . . .". (Id., Art. I, par. 8)

8. For the purpose of adopting arrangements to discharge the responsibility to make the assessments needed to raise the specified contributions, PMA appointed a committee consisting of a representative from American President Lines, Ltd. (APL), Matson Navigation Company

*Report of the Commission*

(Matson), and Pacific Far East Line, Inc. (PFEL), operators of U. S. registered ships as "common carriers by water" as defined in the first section of the Act, [20] Holland America Line (Holland America), Union Steamship Company of New Zealand (Union), common carriers by water, and Overseas Shipping Company (Overseas) (status not clear in record). (Exh. 5) The committee's report on work improvement fund contributions procedures consisted of a majority report subscribed to by the Chairman on behalf of APL, Union, Holland America, and Overseas, and a dissent by Matson and PFEL. (Exh. 5, sub A)

a. The majority recommended an arrangement for dividing the costs of the ILWU Modernization and Improvement Fund set forth in the Memorandum of Agreement with the ILWU of October 18, 1960, whereby contributions to the fund are to be "based on cargo tonnage basis" (Exh. 5-A; p. 1) with an annual review by the Association to "determine the equity of the formulas as conditions change. (Exh. 5, Sub A, p. 1) The report states, "the committee recommends that the contributions to the Fund be raised on a cargo tonnage basis . . .", but the committee's deliberations "centered on three methods of contribution . . . (1) contributions based on straight time man-hours of each employer, (2) contributions based on manifested cargo tonnage, (3) a combination of (1) and (2). In the text reference is made to "the same as the present tonnage formula" which is "the cargo is that manifested for loading or discharging at Pacific Coast ports". (p. 5) The "manifesting" qualification was an essential part of the committee's report which was adopted by the membership. (See also p. 7, referring to "the proposed charge on manifested tonnage". Whatever the manifest showed was to be the guide.) (Note: The costs of the fund are those [21] set forth in Article II, par. 1, of the Modernization Agreement which incorporated, with revisions, the provisions of par.



*Report of the Commission*

39 of the Memorandum of Agreement of October 18, 1960. The former Agreement was not drafted in final form and signed and sealed until November 15, 1961, but was entered into "as of" January 1, 1961. The committee report was dated January 4, 1961.)

b. The minority reported that the formula should be based on a combination whereby part of the fund would be accumulated by tonnage assessments and part by man-hour assessments with a 40%-60% proportion to begin with, subject to correction in the light of experience. (Exh. 5, Sub. B, 10-11)

9. The committee's majority report was considered by the Board of Directors at a meeting on January 6, 1961, and after "considerable discussion" of the committee's report "it was moved and seconded that the collection of the Fund be based on a tonnage formula with all tonnage being treated equally as to rate for a period of six months . . ." The Minutes show the vote on the motion was 12 "yes", 3 "no" and 3 "withheld", followed by the notation "Motion carried", and were subscribed by J. A. Robertson, Secretary. (Exh. 2-P)

10. The Board of Directors' action was considered by the membership at a meeting on January 10, 1961. Respondents were shown as "Present", represented by Messrs. C. R. Redlich and E. G. Horsman, along with representatives of about 81 members (not counting names of members appearing more than once) and staff personnel including the President of PMA. The Minutes showed the "three recommendations which had been made" as explained by the Chairman:

[22] "It was regularly moved and seconded that the Majority recommendation of the Committee ap-

689a

*Report of the Commission*

pointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with the understanding that the method of collection will receive continued study and be presented to the Membership again in six months.

"The Chairman explained the three recommendations which had been made:

1. *Majority Report* (on which the motion is based)

26¾¢ on general cargo  
5½¢ on bulk

2. *Minority Report*

10¢ a ton  
12¢ per manhour

3. *Board of Directors*

20¢ a ton

"It was further agreed that the Board of Directors would examine and determine the definition of bulk cargoes."

followed by the notation that "a secret ballot was taken and the vote polled as follows:

246 yes

74 no

21 withheld

67 absent"

"Motion carried by a majority of the total voting strength<sup>1</sup> of the Association Membership". The Agreement of October 18, 1960, between PMA and ILWU was

*Report of the Commission*

ratified unanimously. The minutes were duly subscribed by the Secretary. (Exh. 2-0) As of January 1, 1961, all cargo is to be measured for assessment purposes on tonnages as shown in ships' manifests.

[23] 11. The record shows no challenge or question as to the regularity of the vote by either the directors or the members. The By-Laws provide that any contract made by PMA on behalf of its members with a union "shall bind the members" except that any member who has not voted or otherwise approved a commitment can relieve himself by resignation within seven days from the vote thereon. (Exh. 3, Article XI, secs. 1 and 3) The record shows no resignations.

12. The Board of Directors at a meeting on January 16, 1961, adopted a motion "that unpackaged scrap metal . . . is to be classified as a bulk cargo . . . effective as of January 16, 1961" and agreed "that the tonnage declarations made by companies are to be made in exactly the same manner as manifested and reported during the year 1959. . .". This action had the effect of adding the "during the year 1959" qualification to the "as manifested" qualification. The minutes were duly subscribed by the Secretary. (Exh. 2-N)

13. The Vice President and Treasurer of PMA in a circular letter of February 3, 1961, wrote members on the subject, "Cargo dues—Tonnage—Automobiles", after noting automobiles were being reported on a weight basis: "Any steamship company or contracting stevedore who has not been reporting and paying dues on automobiles on a

---

<sup>1</sup> Members have different numbers of votes as prescribed in Article VI of the By-Laws. Votes at the membership meetings depend upon a formula which gives effect to the volume of cargo handled by each member at certain ports and to the number of personnel employed. (Art. VI, Sec. 1.)

*Report of the Commission*

measurement basis since January 1958 should immediately complete a revised tonnage declaration form: . . . Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis". (Exh. 36) A February 24, 1961, communication to [24] "committee members", referring to a February 21, 1961, meeting of members, stated:

"(4) The Mechanization Fund assessment for autos should be on a measurement ton basis, regardless of how manifested. 8 agree, none oppose." (Exh. 44)

As of February 21, 1961, the qualifications "as manifested" and "during the year 1959" disappeared and were replaced by "a measurement basis" in regard to automobiles only.

14. The Board of Directors at its regular quarterly meeting on March 8, 1961, approved changes (a) in assessments for full and empty "Army conexes" and (b) to provide that "coastwise cargo be assessed in the traditional manner at the rate of one-half the Work Improvement Fund rate for offshore and intercoastal cargo; that is, a single ton of coastwise cargo would pay a total of 27½¢ assessment, one-half at the point of loading and the other half at the point of discharge." The minutes were duly subscribed by the Secretary. (Exh. 2-M)

15. As of December 18, 1961, PMA reduced the tonnage assessment on lumber, logs, and automobiles to 24½¢, but added 4¢ for the Walking Bosses and Foremen's Mechanization Fund and an assessment of 15¢ per man-hour "on all ship clerk hours". (Exh. 56, meeting 12-13-61)

16. The minutes of the annual meeting of members on March 13, 1961, show unanimous ratification "of all

*Report of the Commission*

actions of the Board of Directors and Association Committees during the year 1960". The minutes were duly subscribed by the Secretary. (Exh. 2-L) The minutes of the meeting of members on May 14, 1962, show "that the Membership action of March 14, [25] 1962 [the defeat of the motion ratifying all action of the Board of Directors and Association Committees during the year 1961] be and hereby is rescinded and that all actions . . . during the year 1961 be ratified." The motion was carried and on another vote was "made unanimous", and the minutes were duly subscribed by the Secretary. (Exh. 2-G)

17. The minutes of the Directors Meeting on July 3, 1962, show a motion unanimously carried that "the contribution rate on all lumber moving in the coastwise trade shall be \$.05 per ton, 2½¢ of which is paid at the port of loading and 2½¢ at the port of discharging". The minutes were duly subscribed by the Secretary. (Exh. 2-F)

18. The minutes of the Directors Meeting on December 12, 1962, show a motion unanimously carried "that the contribution rate to the Walking Boss Mechanization Fund be 2¢ per ton effective January 1, 1963" instead of 4¢ per ton as before. The minutes were duly subscribed by the Secretary. (Exh. 2-D)

19. At the annual meeting of the members of PMA on March 14, 1963, "all actions of the Board of Directors and Association Committees during the year 1962" were ratified by motion "unanimously carried". The minutes were duly subscribed by the Secretary. (Exh. 2-A)

20. The several "actions", resolutions, and adopted motions of members of PMA were acted on by those members providing terminal facilities and wharfage, including Respondents, by charges to VW and other users by seeking



*Report of the Commission*

collection from shippers and by being billed separately by Respondents. (Exhs. 9, [26] 23, 32) One member of PMA informed a PMA official that the cost of the assessment on automobiles is so much greater "as compared to the stevedoring cost" that it could never be considered that the cost would be absorbed. (Exh. 24) The Committee considering the assessments itself knew shippers would be asked to pay in expressing a belief the measurement did "not work an inordinate hardship on the shipper." (Exh. 27) The entire membership considered (a) "the problem of collecting funds from Volkswagen due the Mechanization Fund" at one of its meetings (Exh. 2H) and (b) a recommendation to establish "an escrow account for payments by stevedores on behalf of Volkswagenwerk". (Exh. 2C)

21. a. At the meeting of the Board of Directors of PMA and American Flag Operators, July 3, 1962, after noting that companies handling Volkswagens "had made no contribution to the Mechanization Fund" (p. 5), a motion to approve a recommendation of the "Coast Steering Committee" was unanimously carried to modify a previous action so as "to provide that PMA counsel assist Marine Terminals (and other stevedoring companies handling Volkswagens) only if the action by or against Marine Terminals raises issues which jeopardizes the Mechanization Plan or other interests of the industry. . .". (p. 6) (Exh. 2-F)

b. The previous action was taken at the meeting of the Board of Directors, December 13, 1961, wherein "it was agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel". The support and action referred to [27] "the problem of collecting funds from Volkswagen due the Mechanization Fund" and a

*Report of the Commission*

request by respondents "that they be authorized to bring suit against Volkswagen for the monies due". (Exh. 2-H, p. 4)

22. The facilities used by VW were initiated by means of a "Stevedoring Order" which described the contents of the arriving ship and the work to be paid for. (Exh. 36)

23. Respondents were required to prepare a "tonnage declaration form" (Reports of Tonnages) and to send it, together with "a check for contributions to be in the Association's hands *not later than the 20th of the month following the month in which such cargoes are handled.*" (Exh. 35, item 7) The foregoing was dated January 17, 1961. A further instruction to members, including Respondents, over the signature of the Vice President & Treasurer of PMA on March 16, 1961, stated: "We again wish to reiterate the fact that this contribution is a contractual commitment, exactly the same as welfare, pension and vacation contributions, and should be paid into the Association not later than the 20th of the month following the month in which such tonnages were handled". (Exh. 55, p. 2)

24. Respondents, acting by their Vice President, discussed the problem of the assessment on automobiles with other companies who handle them on the Pacific Coast, and none thought it was possible for members to absorb the assessment. (Tr., 239) The matter was also discussed at PMA meetings. (Tr., 240) It was the uniform opinion of the contracting stevedores with whom the Vice President talked that the assessment could not [28] be absorbed by members when on a measurement basis. (Tr., 241) No agreement was reached as a result of the discussions as to how assessments would be collected, it was stated (Tr., 247), but as a result everyone subject thereto did the same thing by using the same measurement, but not paying the result-

*Report of the Commission*

ing assessments on Volkswagens brought in under contract carriage. (Tr., 209-270) After VW refused to pay the amount of billings representing the assessment on a measurement basis, the Respondents and members of PMA refused to pay their assessments, and so did Waterman Corporation of California, agents for Walleniusrederierna. (Exh. 9) Respondents stated they "are merely following out the instructions of the Board of Directors of the Pacific Maritime Association and therefore are considered only a collection agency in this matter" and asked for instructions as to "what stand we can take in demanding payment of this assessment." (Exh. 9) Associated-Banning Co. had asked PMA officials for instructions on how to handle refusals to pay assessment charges (Exh. 11) after Waterman Corporation of California, agents for Wallenius Line, stated they would pay only on a unit basis as manifested in 1959 (Exh. 12), not on a measurement basis. Respondents discussed assessments with an official of PMA. In a letter to the official, Respondents' Vice President noted the official "was aware of what was behind." Respondents "not making certain payments into the plan, but nevertheless, you had to protect yourself by writing the letters referred to above". (Exh. 13) The "letters" were demands for payment of assessments.

[29] 25. Automobiles are assessed by a measurement ton measure rather than by a unit or weight measure. Comparative measures are as follows:

|                 | Weight                  | Measurement      |
|-----------------|-------------------------|------------------|
| Sedans          | 1,643 lbs = .8 wt. ton  | 7.8 cubic tons   |
| VW Transporters | 2,193 lbs = 1.1 wt. ton | 11.4 cubic tons* |
|                 |                         | (Tr., 281-282)   |

Other figures show:

|                    |                         |                 |
|--------------------|-------------------------|-----------------|
| Sedans             | 1,609 lbs = .8 wt. ton  | 8.3 cubic tons  |
| VW Average         | 2,028 lbs = 1.0 wt. ton | 10.0 cubic tons |
| (tons approximate) |                         | (Exh. 7)        |

*Report of the Commission*

(\*Note: Exh. 7 shows for Transporters 2447 lbs and 11.8 tons and different average.) Roughly, the average assessment on Volkswagen vehicles would be about 10 times as as high as on a measurement tonnage basis than on a weight ton basis. The measure applicable to Complainant's property was estimated to be at a level from 10 to 15 times higher than the measure for assessing other general cargo. (Exh. 7, p. 2, par. 6)

26. The assessment applicable to automobiles was stated to increase the cost of handling by from  $33\frac{1}{3}\%$  (Exh. 25) to 35% (Exh. 9). Another estimate was that the increase caused by the new measure was about 22% in the case of sedans and 31% in the case of transporters. (Exh. 26) Another estimate was "more than 26% in discharge costs" of Volkswagens. (Exh. 7) These estimates were not refuted. In contrast, the estimated average increase in the "discharging costs" or "cargo handling expenses" of packaged general cargo resulting from the assessment [30] was 2.2%. (Exh. 7 and Exh. 26, p. 2) The measurement ton measure causes a \$2.76 per vehicle charge in comparison with a 28¢ per vehicle charge on a weight ton measure. The longshore cost is \$10.45 per unit. Lumber is assessed on a unit measure based on 1,000 board feet per unit at the rate of  $2\frac{1}{2}\%$  per manifested ton. (Exh. 26, p. 2) Unboxed automobiles are normally handled for charging purposes between factory and distribution on a unit basis. (Exh. 26, p. 2)

27. The man-hours necessarily employed in handling Complainant's property, unboxed automobiles, always have been less than practically any other commodity. (Exh. 26) The mechanized handling of packaged general cargo may effect savings, but because of past improved handling methods no new practical application of mechanization to the discharge of unboxed automobiles is visualized.



*Report of the Commission*

(Exh. 7) Automobiles will benefit less from mechanization than other cargo. The average direct labor cost, without fringe benefits, of discharging Volkswagen vehicles was 49¢ per measurement ton as compared with the 27½¢ measurement ton assessment. The assessment is 56% of the average direct labor cost. (Tr., 284) In 1962, 28½¢ was the assessment, or 58% of the average. The total direct longshoremen's labor cost of all PMA members in 1962 was \$103,953,362, and total fund assessments were about \$5,200,000 (Tr., 285, Exh. 49), or an assessment of 5.8 of the total direct labor cost ("wages"). (Tr., 284)

28. For Volkswagen vehicles transported in chartered ships, the manifests and bills of lading show the number of automobiles [31] and the weight in kilos. No specific rate or total freight is shown being noted by the endorsement "freight prepaid" or "freight as agreed". Contracts for freight are based on a rate per automobile unit. For the same reason, unloading charges are customarily on a unit basis. (Exh. 7)

The intercoastal freight rate structure is on a weight basis, i.e., not measurement, and the reporting and levying of a tonnage assessment for automobiles is on a unit of 2,000 lbs. (Id., and Tr., 222-223, 288-290, 313) The California State wharfage on unboxed automobiles is based on a weight ton of 2,000 lbs. (Id.) Volkswagen vehicles are manifested for purposes of common carrier (liner) shipments on a unit basis of measure. (Id., and Exh. 12) Many automobile manifests show weight, but some show measurements also. (Tr., 323-324)

29. Any property other than automobiles would be measured for assessment charges on a manifest basis even where the per ton charge is less. (Exhs. 7, 44)



*Report of the Commission*

**FINDINGS**

1. Complainant VW is a shipper of property consisting of automobiles on common carriers by water in foreign commerce and on private carriers through exportation from the Federal Republic of Germany (Germany) and importation into the United States, and obtains and uses the facilities of Respondents.

2. Respondents are persons carrying on the business of furnishing warehouse or other terminal facilities in connection with a common carrier by water and each is an "other person subject to this act" as defined in the first section of the Act.

[32] 3. Respondents have entered into an agreement with other common carriers by water and with other persons who are carrying on the business of furnishing wharfage and terminal facilities in connection with common carriers by water that they will regulate transportation rates and control and regulate competition among each other by establishing uniform charges which Complainant and others must pay for unloading and storage services, as a part of wharfage and terminal facilities, measured by the tonnages of property handled.

4. Respondents have provided for a cooperative working arrangement by agreeing to assess themselves in accordance with PMA directives and to pay assessments into the Mechanization and Modernization Fund. Assessments and payments are collected by charges for facilities supplied to Complainants.

5. Neither a true copy of any agreement regulating transportation rates and controlling and regulating competition, nor any memorandum of the cooperative working arrangement has been filed with the Commission.

*Report of the Commission*

6. Respondents, in conjunction with other persons, members of PMA, by measuring the assessment of the amounts they are obligated to pay into the Mechanization and Modernization Fund, using a measurement ton regardless of how manifested for automobiles, but a revenue ton (i.e., whatever type of tonnage used to compute freight charges) as manifested for other cargo, and by adopting special rules for certain other property, indirectly subject the property automobiles and the particular person Complainant VW to undue and unreasonable prejudice and disadvantage.

[33] 7. Respondents' regulations and practices relating to and connected with receiving, handling, and delivering property consisting of automobiles are unjust and unreasonable insofar as such property is required to be measured differently, for the purpose of Mechanization and Modernization Fund assessments, from other property, with the result that such property bears a disproportionately high share of the cost of unloading when the assessment costs are included as part of Respondents' charges for facilities and services furnished to Complainant.

DISCUSSION

*Introduction:*

Respondents' Answer does not deny the status of Complainants as exporters of automobiles from Germany and as importers thereof into the United States, nor that Respondents are engaged in foreign commerce. (Answer, par. II) Respondents admit that they are in the business of furnishing terminal services in connection with common carriers by water, but deny that terminal services were furnished Complainant in connection with a common carrier by water or that the Commission has jurisdiction over them as terminal operators. (Answer, par. III) Re-

*Report of the Commission*

spondents admit they have included as part of their charges for services the amounts of assessments under the Supplemental Agreement on Mechanization and Modernization. (Answer, par. IV) Respondents deny anything they have done violates any provisions of the Act (Answer, pars. V, VI, VII, and VIII), but admit the statements regarding the action in Admiralty before a United States District Court and deny the Commission's jurisdiction with [34] respect to the matters alleged (Answer, pars. IX and X). The facts admitted will be accepted without further discussion, particularly the fact that Respondents have passed on to Complainant in their charges and billings the agreed-upon assessments which produce the money for the Mechanization and Improvement Fund. Wherever services are rendered, it is considered that such services are part of the total facilities furnished by Respondents. (See cases cited below) Herein the term facilities includes services.

*Respondents' three major denials are:*

First, they are not persons subject to the Act, at least with respect to the activities involved.

Second, no unfilled or unapproved agreements of the type described in Sec. 15 are involved.

Third, they have not violated any other provisions of law in Secs. 16 or 17 of the Act.

*Reasoning in Support of Findings:*

Sec. 22 of the Act creates a right in "any person" to file a complaint setting forth a violation of the Act "by a common carrier or other person subject to this Act."

The facts in items 4, 5, and 9 through 19 establish that PMA members are both common carriers by water and other persons and that their activities which are the subject of this proceeding have all been taken after following

*Report of the Commission*

correctly the procedures of their agreements of association and have all been duly authorized and carried out pursuant to such authorizations. There is no question herein as to unauthorized acts or agreements, [35] nor that Respondents are not fully aware of, and responsible for, each action.

*1. Persons subject to the Act.*

There is no denial of Complainant's status as "any person", referred to in Sec. 22, but Respondents deny they are an "other person" under the first section of the Act because their activities are limited to the stevedoring of chartered ships; neither wharfage, warehouse, or terminal facilities, nor facilities in connection with a common carrier by water are the subject of the proceeding; and, therefore, the law does not apply to them.

The denial is not supported. The facilities furnished to the Complainant and furnished to the public are far more comprehensive than stevedoring services. Stevedoring is combined with the furnishing of all kinds of terminal facilities. The services range from the opening of hatches to towing cars to storage areas and require the furnishing of many kinds of equipment such as towing tractors and other gear. The fact that VW's order is titled "Stevedoring Order" does not control what happens after the order is issued. Complainant's order to Respondents explicitly refers to charges covering the supply of discharging gear, 10 days' free storage, public liability and property insurance, and wharfage on cars. As part of its non-stevedoring facilities, Respondents furnished motor-driven tractors and bridling devices and guard service, lighting, and cleaning for their storage spaces. Respondents may also be considered as furnishing warehouse facilities to the extent [36] they furnished a parking lot pending collection of the cars by dealers even though there was no roof over, and walls surrounding, the cars as would be the case with a traditional warehouse.



*Report of the Commission*

A PMA official testified that longshoremen employed in terminal operations were to benefit equally with those involved in stevedoring work (Tr., 106-107, Exh. 5A, p. 7), thus admitting more extensive operations. The Commission's predecessors have held that persons furnishing hand trucks, flat top trucks, lift trucks, switch engines, and the labor required to operate such equipment are "other persons and the furnishing of stevedoring and terminal services constitutes a "facility". *Status of Carloaders and Unloaders*, 2 USMC 761 (1946) and *Carloading at Southern California Ports (Agreement No. 7576)*, 2 USMC 784 (1946). Where stevedoring has been combined with furnishing terminal facilities, the Commission has assumed jurisdiction and been sustained. *Greater Baton Rouge Port Comm'n v. United States*, 287 F. 2d 86 (5th Cir. 1961) *Cert. denied*, 368 U. S. 985 (1962).

Respondents concededly furnished terminal facilities in connection with other common carriers by water and about 90% of their business is done for common carriers. Of this business Respondents furnished Complainants the use of their facilities in connection with the common carriage of some of the 9,363 vehicles in 1961 and 13,672 vehicles in 1962, shipped through Pacific ports, and made its facilities available at all times to importers, regardless of how the vehicles were shipped.

[37] In *California v. United States*, 320 U. S. 577 (1944), the Supreme Court sustained jurisdiction over terminal operators in their relations to all carriers and shippers, stating (at 586):

"And whatever may be the limitations implied by the phrase 'in connection with a common carrier by water' which modifies the jurisdiction over those furnishing 'wharfage, dock, warehouse, and other terminal facilities,' there can be no doubt that wharf storage facilities provided at shipside for cargo



*Report of the Commission*

which has been unloaded from water carriers are subject to regulation by the Commission. \* \* \*

Jurisdiction depends on status. Respondents' status is that of an "other person" subject to the Act within the meaning of the first section, because their status is fixed once the connection with a common carrier is shown and does not shift to divest from time to time, depending on whether or not the warehouse or terminal facilities are furnished for a common carrier. Respondents' acts in connection with common carriers—not conformity with other sections of the Act besides the first—fix their status or classification.

Findings 1 and 2 are supported.

*2. Unfiled Agreements.*

The record shows, first, there was an agreement that the collection of assessments for the Mechanization and Modernization Fund were to be made from users of members' services; and, second, the subject matter of such agreements is covered by Sec. 15 of the Act.

First, each Respondent as an "other person subject to this act" and the members of PMA, consisting of common carriers by water and other persons furnishing terminal facilities, [38] adopted motions, resolutions, and other actions prescribing their future conduct, and performed acts in accordance therewith. The Modernization Agreement to which respondents as members of PMA are a party expressly provides for collection of assessments under "arrangements adopted" pursuant to the PMA by-laws. (Fact No. 7) Agreements under Sec. 15 include "other arrangements", and this is one of them. Respondents were present at meetings and voted on the necessary resolutions to implement the Modernization Agreement. By these actions, Respondents became parties to an agree-

*Report of the Commission*

ment and conformed in whole and in part with such agreements. Respondents understood and acceded to the directives of the Board of Directors and of the PMA officers, guided by approved committee reports, all of which were duly authorized in accordance with constitution and by-law requirements finding on Respondents. The majority committee report was adopted after "considerable discussion" and so was well understood. Sec. 15 explicitly makes the term "agreements" include "understandings". Each action involved an understanding as to what was to be done, followed up by action. The Respondents were parties to all the agreements evidenced by the minutes of meetings and written communications from the directors and officers. Part of these understandings was that collection of the assessment would be from members' customers.

The majority believes the agreement as to the manner of assessing its own membership does not fall within Sec. 15 because "standing by itself, it has no impact upon outsiders." It is hard to take this assertion seriously. In the first place [39] there is no "impact" test to determine whether an agreement falls within Sec. 15. In the second place this statement seems to say that assessments totaling \$29,000,000 have no impact upon persons who will provide this amount of money. To make the agreement to assess stand by itself apart from how and from whom it is to be collected ignores significant realities. If the agreement to assess really stood by itself, apart from any agreement to collect, and had no impact on outsiders, there would have been no need for members, including Respondents, to ask for instructions or authorizations when the outsiders refused to pay, nor for the refusal of Respondents, other terminal operators, and stevedores to refuse to pay the assessments. If the agreement to assess truly stood "by itself", each member would be honor bound to pay, no

*Report of the Commission*

matter what happened. The claimed lack of agreement about collections is contradicted by the fact that everyone behaved as though all understood the assessment would be collected from outsiders such as Complainant and failed to pay after seeking instructions when VW refused to pay. The correspondence shows a general understanding that PMA members were only collection agents, and when shippers ("outsiders") refused to pay, the members need not pay. Their own concept as agents implies agreement and precludes adverse interest. The collection method was communicated to PMA officials and was discussed at meetings, attended by most of the members, in terms which conveyed an understanding that all had arrangements to have the amounts needed collected from users of members' services. The exact method each would follow [40] to collect the money may not have been discussed, but it was understood that all would use the same measure and obtain the product of its use from customers. The evidence showed other terminal operators had done the same thing after discussion on the subject. The fact that some may not have segregated their charges the same as Respondents or stated them separately on a piece of paper does not negate the evidence and eliminate the fact of agreement to include the charges. Anyone who has expenses relating to the assessment would normally reflect his expenses by charges creating someone else's costs without agreement, but it might not be done after deciding on the same measure as here, nor after consultation, nor in accordance with instructions as to what to do if it didn't work, nor in agreement as to how to conduct litigation if this became necessary. Recognition of the understanding was shown in the letter referring to the "need to protect yourself by writing" letters asking for payment of overdue assessments. The letter preserved the appearance of rights, rather than made serious demands. The protection only concerned the

*Report of the Commission*

need to dissemble the fact that the customers of respondents were being billed for the assessments in one form or another and payment of assessments by respondents would not be made unless the customers paid. One of the officers of PMA stated the intent of all members that the obligations to pay were a "contractual commitment", but it was clear actual payment depended on collections. There was only one practical way the commitment could be implemented, and this was well understood to be through payments by customers of respondents.

[41] Supplementing the evidence of an agreement to regulate rates and competition are the actions taken to select counsel to enforce collection of assessments. At a meeting on May 14, 1962, it was "agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel". The agreement was in response to a request by respondents that PMA give support "on the Volkswagen suit". The suit was referred to in "a communication from the Funding Committee covering the problem of collecting funds from Volkswagen due the Mechanization Fund". The funds were not considered to be due from Marine Terminals. This shows clearly the understanding of everyone that VW and other shippers, not the members, were to pay the money "due the Mechanization Fund" and members were collecting agents. Inability to collect from "outsiders" rather than from members was understood to be a shared "problem".

Later there must have been belated recognition of the perils of this action, because it involved PMA counsel in representing both the creditor PMA and the defaulting debtor member such as respondent Marine Terminals who refused to pay his "contract commitment" assessment. The appearance that the assessment was due from members was all that had to be preserved, not the real claim. There-



*Report of the Commission*

after, it was provided "that PMA counsel assist Marine Terminals Corporation (and other stevedoring companies handling Volkswagens) only if any action against Marine Terminals raises issues which jeopardize the Mechanization Plan or other interests of the industry. . ." [42] PMA reserved the right to institute action against members still in default, by shifting to a limitation on actions.

It is not apparent how the shift takes the curse off the embarrassment involved in representing adverse interests because jeopardizing issues could arise in a debt action. The evidence underlines the point that respondents and PMA understood they were working together in a non-adversary arrangement to collect money due from "outsiders" rather than from members. Normally, even jeopardy to the Mechanization Plan would not justify such an understanding where some one has failed to meet a "contract commitment". It took a special understanding to alter normal conduct. Their initial spontaneous actions point to common understandings and arrangements to work together in effecting collections from shippers in spite of a conflicting debtor-creditor relation between PMA and its members, and only their afterthoughts point to an understanding that the adversity must be preserved, but only where the Plan was not jeopardized. Both actions were preceded by agreement in any event. After agreement there was modified conduct in recognition of the adverse interests and separate counsel were retained when the admiralty action was initiated when all other action had failed to make the outsider VW rather than the members pay up without question.

Sec. 15 is explicit that the "term 'agreement' in this section includes understandings, conferences and other arrangements."

[43] Respondents concede in their answer that they "admit that they have included as part of their charges



*Report of the Commission*

for services the amounts of the assessments . . ." and the evidence supports the finding that they did so as the result of a common understanding, agreement, or working arrangement.

The majority disposes of this evidence by stating the record is devoid of evidence showing an additional agreement. Perhaps a court will decide the evidence is not adequate to prove the complaint contrary to my position, but absence of evidence will not be the reason for rejecting the complaint. The Administrative Procedure Act in Sec. 8(b) directs us to provide a statement of the reasons or basis for our conclusions. The directive is not satisfied by such a succinct disposal of all this evidence. The reasons or bases are thought to be supplied by stevedores' opinions and explicit statements to the contrary. In my opinion, this evidence is overcome by other statements and deeds showing agreement to pass on the assessments, but, whatever the outcome may eventually be, the majority should not pretend the other evidence does not exist and accept such self-serving statements without also substantiating the statement and overcoming the evidence which complainants presented with reasons showing non-contradictory effect. The characterization of the majority position as "more logical and less contrived" does not supply the deficiency of reasons or basis for the "devoid of evidence" ruling.

Second, the subject matter of the agreements is related to the subjects of Sec. 15. Sec. 15 requires that the subject [44] of agreement be related to "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations or special privileges or advantages; controlling, regulating, preventing, or destroying competition . . . or in any way or in any manner providing for an exclusive, preferential or cooperative working arrangement." The subject matter of the agreements was (a) the measurement of the property using the terminal facilities,

*Report of the Commission*

in accordance with the agreed guiding regulations, and (b) the method of collection of the charges calculated after making the measurement. Both regulated or controlled rates and competition.

The effect of the measurement tonnage measure and assessment was to create a new cost element in addition to pre-existing rates for terminal facilities. Respondents had to increase their charges to their customers to recover the new costs and thereby the total transportation cost of moving automobiles was increased. The measurement ton assessment on automobiles became a part of the Respondents' rate structure. The facts showed further that all operators got together and decided they could not absorb but would pass on the assessment applicable to automobiles, and PMA's members themselves agreed to impose the charge. Respondents' lawyers were under no illusion about everyone's understanding or contemplation when they wrote with reference to the Supplemental Agreement between PMA and ILWU effective January 1, 1961:

"It was contemplated that these assessments, as added stevedoring or terminal costs, could be added to the charges of the stevedore or terminal companies."

[45] The agreement on the conduct of litigation shows how important the method of collection was on rates. If it is understood respondents need not pay assessments unless they or PMA can collect separately, rates will be regulated at a lower level than if assessments are a cost of business which Respondents must pay as a debt whether collected or not. Accordingly, these agreements regulate rates, depending on which course of action is followed. Granted there was plenty of ambiguity in the method of collection to be followed as shown by the shifting positions taken, but the fact of change itself shows a prior understanding

*Report of the Commission*

that rates were to be regulated after each change. The high level of charges from the automobile measure and the large number of automobiles imported caused large sums of money to be involved. This situation created extreme pressures to prevent the "contract commitment" advice from being taken too seriously and to devise methods of collection which would not disrupt members' rates which would occur if the assessment were truly a debt of the members. The alteration of normal conduct and temporary confusion as to the niceties of selecting counsel disclosed an understanding of how Respondents' rates would be affected, depending on whether Respondents were debtors or PMA agents for collecting the assessment. In the former case the credit of PMA members and PMA power over them protected the Fund; in the latter, only the credit of a much larger number of shippers.

The increase in charges constitutes a regulation of transportation rates, and the combined activity of Respondents [46] and other terminal contractors and stevedores in agreeing to not absorb the assessment, as well as their activities as members of PMA, constitutes a control and regulation of competition.

Confirmation of the control of competition is supplied by generalized business considerations. If a group of competitors agree to share a cost element such as the rental of a pier and terminal area and then allocate the rent after a collectively made decision to named customers or specified types of property, instead of allowing actual use to govern the allocation, they thereby distort the normal forces of the market by their agreement to allocate, which is the equivalent of control.

The fact that the increased charges may have applied only to non-common carriage is not material, because the common carrier test applies to fixing the status of persons defined in the first section of the Act and does not exclude

*Report of the Commission*

activities and property from the law's protection. The fact that the combined activities resulted in an understanding to collect by passing on assessments in the form of higher transportation charges and to make them apply to property transported in non-common carrier service does not absolve the actor once he is classified as an "other person". Validating absolution would make identical activity in relation to identical property have different consequences under the law, depending on the status of the ship carrying the property before it reaches the Respondent. Under the first section, the status of Respondent is fixed [47] by his acts before the ship reaches the terminal facilities. Legal conclusions involving Secs. 15 or 16 must be based on status ascertained before the actions complained of, not on common carrier vs. non-common carrier refinements ascertained afterwards.

The majority seeks to avoid the consequences of reasoning by referring to the "literal language of section 15" relative to a "cooperative working arrangement" and stating the terms of Sec. 15 were qualified by Congress by means of legislative history "to apply only to those arrangements" which affect "competition". The terms are also thought to be qualified by associating them with agreements to pool secretarial workers or to share office space and agreements which affect only labor-management relations. The latter was interpreted by a court not to be covered by a provision of the Interstate Commerce Act relating to combinations and consolidations of land carriers.

Sec. 15 is sufficiently explicit and need not be compared with unrelated laws or interpreted to limit the subject to cooperative working arrangements and "competition" in disregard of other provisions in Sec. 15. My decision is also based on the other terms and on the understandings and arrangements, cooperative or otherwise, relative thereto. Far from finding the record "devoid of evidence showing the existence of such an additional agreement" to pass on assessment expenses, I find the record amply supplied with



*Report of the Commission*

evidence on such an agreement and its relation to the subjects referred to in the first paragraph of Sec. 15.

[48] Finding No. 3 is supported.

The acts of Respondents and others following their agreements to assess themselves in response to the adoption of the PMA resolutions and motions and the issue of PMA directives consisting of using the measurement tonnage measure on automobiles and collecting the amounts found to be due by passing on the necessary expenses equally constitute a cooperative working arrangement. Respondents and other PMA members all worked together in doing the same thing pursuant to their prior arrangements. Contributions are referred to in the By-Laws as being required under "arrangements" of PMA. Everyone "contemplated" doing the same thing. The same reasoning applies here to support the finding as was applied to the preceding part of Sec. 15.

Additionally, when VW refused to pay on billings including the assessment, the Respondents and other PMA members affected thereby refused to pay assessments. Wallenius Line, a common carrier but not shown as a member, also refused to pay. (Tr., 324) This action constitutes evidence of an understanding and a cooperative working arrangement, (a) to charge persons such as Complainants for the amount of assessments and (b) to relate the payment of the assessment directly to the Respondents' ability to collect the charge pursuant to the arrangement. If the amount could not be collected, the assessment would not be paid.

Under almost identical "cooperative working arrangement" language of Sec. 412 of the Federal Aviation Act, 1958 (49 [49] U. S. C. § 1382), the Civil Aeronautics Board held that the establishment of an employer collective bargaining association of carriers was a cooperative working arrangement which had to be filed. *Airlines Negotiating Conference Agreements*, 8 CAB 354 (1947).

Finding No. 4 is supported.



*Report of the Commission*

The obligation to file has been established above. The records of this office confirm that none of the agreements found herein to exist have been filed. A finding that the agreements and memorandums of arrangements have not been filed is thus supported without the need for further proof.

Finding No. 5 is supported.

*3. Other provisions of law have been violated.*

Sec. 16 of the Act makes it unlawful for any other person subject to the Act either alone or in conjunction with any other person, either directly or indirectly, to give any preference or advantage to any description of traffic in any respect whatsoever or to subject any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. A violation of Sec. 16 is complained of.

Two facts stand out in relation to preference, prejudice, or disadvantage:

First, the charges by Respondents to meet PMA assessments where automobiles are handled were measured by the measurement ton, regardless of how manifested, and no other property was measured by such a rule. Other property was measured according to the way it had been manifested in 1959. The use of the [50] measurement ton measure required a change from both earlier methods and from current practices in regard to automobiles, in comparison with measure of all other property for assessments as freighted or manifested. The measure depended on how freight charges were determined, except for automobiles. The Vice President, before February 21, 1961, when the "measurement" measure for automobile assessments officially went into effect, had claimed such a measure

*Report of the Commission*

rather than a tonnage measure had applied all along, at least since January 1958, but his claims never were adopted officially by PMA. All we have before February 21, 1961, is his personal assertion of what PMA should be doing rather than what PMA actually did. Somewhat inconsistently with the claim, letters regarding declaration forms refer only to "tonnages" in January and March 1961.

Second, the effect of the change in measurement and the different treatment was to make the traffic described as automobiles bear a substantially higher assessment charge: (a) about 10 times higher than if measured on a weight basis as shown in many manifests and as other cargo is measured, (b) from 22% to 35% higher in terms of unloading costs than other traffic described as packaged general cargo which bore a 2.2% increase as a result of the assessments, and (c) about 10 to 15 times higher than other general cargo.

Where exceptions were made for other descriptions of traffic, the charges were always lower: (a) lumber was measured on a unit basis for assessment charges, but automobiles were not, even though manifested in some cases on a unit basis and [51] there was a normal method of measuring other handling costs on a unit basis, and (b) Army property and coastwise cargoes received concessions.

All the concessions applied to property in domestic transportation, but the increased charges applied to automobiles imported from foreign countries.

Unboxed automobiles were shown generally to require less man-hours handling per unit than practically any other commodity, yet automobiles still paid more.

There is no explanation in the record to show why the different measurement method was applied to Complainant's property. The method was shown to deviate from measurement practices on the coast for other purposes.

The result of the measurement ton measure is that, in the words of at least two stevedoring companies, it is "not

*Report of the Commission*

based on practical considerations and has no comparison to other commodity assessments." (Exhs. 24 and 25) Still another stevedore referred to the measure as "discriminatory and is contradictory to over-all basis of assessing weights or measurement as freighted", i.e., as manifested. (Exh. 23) Other evidence showed that ever since Volkswagens were first shipped to the Pacific Coast in 1954, "they have been freighted on a unit basis, or on lumpsum FIO or time charter" and not only freight but terminal facilities have always been computed and paid at so much per unit. (Exh. 26) Another stevedore referred to statements that "establish the inequity of the effect of the present assessment to these vehicles on a measurement [52] ton basis . . . disregarding entirely the basis on which these vehicles are freighted, as well as the basis on which all stevedores on the Pacific Coast handle their contracts". (Exh. 16) In other words, established trade measurement practices have been disregarded in this one instance for no apparent reason and followed in the case of all other property. This action creates an unreasonable prejudice.

The result of the shift to measurement tons for automobiles made the increase applicable to property where "the man-hours necessarily employed in their handling always have been less than practically any other commodity". This was said to accentuate the percentage disparity in the cost increase. Others refer to the "undue burden on this one commodity". (e.g., Exh. 18) Such effect creates an unreasonable disadvantage.

There was not in 1959 nor at this time any uniform practice in manifesting automobiles any more than there was in 1959 with respect to other property, except that in the coastal trade automobiles are manifested and freighted on a weight basis and common carrier shipments of Volkswagens were and are most frequently manifested and freighted on a unit basis, although weights and measures may be shown. The treatment of automobiles cannot be

*Report of the Commission*

justified on the basis of any uniform traditional trade practice of using a measurement ton measure. This action creates a preference for other property and a prejudice to automobiles.

Because of the difference in the method used to measure Complainant's property, both in relation to other services for [53] automobiles and to other descriptions of traffic, and the resulting high increase in the economic effect caused by the departure from the usual measures, it is concluded that there has been preference and advantage to traffic other than Complainant's property and disadvantage and prejudice to Complainant's property. The actions have been indirect because the method used was to adopt the measure enforced by PMA in cooperative arrangement with other members.

Precedents of this agency have added to Sec. 16 the requirement of a showing that competitors have been meted out different treatment before undue prejudice in violation of Sec. 16 may be proven, *Afghan-American Trading Co. v. Isbrandtsen Co.*, 3 FMB 622 (1951) and *Huber Mfg. Co. v. N. V. Stoomvaart Maatschappij "Nederland" et al*, 4 FMB 343 (1953), but others have held Sec. 16 was violated without any proof of disadvantage among competitors, *Absorption or Equalization on Explosives*, 6 FMB 138 (1960), *Swift & Co. et al. v. Gulf and South Atl. Havana Conf.*, 6 FMB 215 (1961), affirmed: *Swift & Company v. Federal Maritime Commission*, 306 F. 2d 277 (U.S.C.A., D.C. 1962). In *New York Foreign Frgt. F. & B. v. Federal Maritime Com'n*, 337 F. 2d 289 (USCA 2d 1964) at p. 299 the Court held that the charge "... of widely varying amounts, for no apparent reason, suffices to establish discrimination in violation of Section 16 (First)." The Court was referring to charging shippers disguised markups and was validating a rule which prevented a practice that was alleged to violate Sec. 16 unless prevented by rule. The Court distinguished the cases involving "transport-



*Report of the Commission*

tation [54] or wharfage charges . . . dependent on the particular commodity involved . . .” where the fees for shipping bananas would bear no relation to the fees levied for heavy industrial equipment, and where proof of a violation would require a showing of competitive relationship. The Court continued by stating the fact that the widely varying amounts covered substantially identical services and “. . . seems to us to be prima facie discriminatory in a regulated industry.” (Id.) This statement means the action itself violates the law without proof of a competitive relation to anyone else. The present facts do not concern a comparison of services and related versus unrelated charges for the services, but concern a cost of doing business in the form of an assessment which is like a tax. Nevertheless, a requirement of a competitive relationship is excludable as a prerequisite to proof of a violation because the measure of respondents’ charges is equally unrelated by apparent reason to what the charge is for, just as widely varying charges are unrelated to services that are substantially the same. The statements of the Court about the sufficiency of variations unsupported by reasons and lack of need for competition as proof to establish violation of Sec. 16 (First) are thus pertinent and applicable. A finding of undue prejudice or disadvantage under Sec. 16 should not be made to depend on competition, but may exist in relation to other kinds of property where it is shown they should be treated alike, absent contrary reasons. The existence of competitive shippers may affect the amount of reparation due, but not liability under Sec. 16.

[55] Finding No. 6 is supported.

Sec. 17 of the Act requires every other person to observe just and reasonable regulations and practices relating to the receiving, handling, storing and delivering of property. Sec. 17 singles out certain acts of discrimination against property and authorizes the Commission to prescribe just and reasonable practices. Sec. 17 concerns practices in



*Report of the Commission*

connection with property, no matter how it is transported, whether by common carrier or otherwise.

Respondents have established, observed, and enforced, relative to the receiving, handling, storing, or delivering of property, in the discharge of obligations as a PMA member, the following regulations and practices:

a. adoption of a method of measuring such property to obtain money to meet payments to the Fund;

b. acceptance of the obligation to make, and making, monthly payments to PMA in accordance with the agreed measure; and,

c. inclusion in their charges for terminal facilities of the amount due by application of the agreed measure.

It has been held that practices which result in the assessment of charges against persons not directly benefited by services rendered are an unjust and unreasonable practice within the meaning of Sec. 17. *Terminal Rate Structure—Pacific Northwest Ports*, 5 FMB 53 at 55 (1956). In that proceeding only book entries were involved. A cost allocation accomplished by actual charges against persons not directly benefited, as [56] where automobiles have lower handling charges than other cargo and receive less benefit than other general cargo on the average from the arrangement with ILWU, is equally if not more a "practice" than book entries. Our predecessor stated in the *Terminal Rate Structure* case (supra) at p. 56, "the terminals may not recover, through a service charge, deficiencies in revenue attributable to a totally different operation". Respondents have followed PMA directives by imposing charges resulting from the automobile measure to make up for deficiencies in assessments and contributions to the Fund resulting from lower assessments on coastwise trade, lumber, certain Army property, and to some extent the lower assessment

*Report of the Commission*

on all other property. Complainant's property is made responsible for bearing 10 times higher charges than other property and 20 times higher than that in the coastwise trade. The difference in treatment between Complainant and all others resulting in this expensive result is also an unjust regulation.

The Respondents' practice may not be looked at only in relation to one item of property, i.e., automobiles, but must be viewed as part of the complex of practices of which it is a part and comparisons and evaluations made as to the reasonableness of the entire system of cost measurement and allocation. The majority avoids this task of passing on reasonableness of the measure on the ground that (a) "there is no statutory requirement" of equality and (b) "it was necessary in the business judgment of respondents." Neither is there any statutory requirement of inequality and *Evans Cooperage Co., [57] Inc. v. Board of Commissioners*, 6 FMC 415 (1961), does not hold that charges may be differentiated without reason so as to burden one person or class of property 10 times more than others where "the record contains no basis upon which a reasonable allocation of costs could be made". In the *Evans* case, on the contrary, the charge to complainant was exactly the same as to everyone else, and it was only found the benefits, while somewhat different, could not be measured precisely. The facts were that the ship charged dockage did not tie up to the dock, but to the seaward side of a ship already tied up. The "business judgment" argument only means the measure is reasonable because Respondents say so. This is an excuse, not a reason.

Finally, the fact that the decision was a business judgment unrestrained by normal forces of supply and demand introduces potential unjustness in the regulation by its unrestrained character. Here business judgment is not being exercised subject to competitive market restraints of other suppliers, but is being exercised by substantially all sup-

*Report of the Commission*

pliers to regulate the market itself. Judgment is restrained by the vote of PMA members who are virtually the entire market for the handling of property passing through Pacific Coast ports. The articles of association obligate obedience to the voted decision. There is no other practical restraint, particularly in view of evidence that ILWU was putting pressure on non-PMA members to contribute the same as members. Normally the function of regulating the market itself when needed in the public interest is reserved to government, [58] rather than to a private association or to the association aided by the dominant labor union association.

If the assessment charges varied in response to competitive forces within the market, a business judgment decision might not be unjust because of the protective restraint afforded by the open market. Where the market protection is missing, however, there is no assurance of justness, and it is the function of government to provide the assurance. The facts of this case provide a perfect example of what happens when there is a single decision rather than an interplay of conflicting decision by many entrepreneurs. The tenfold charge would probably be impossible under competitive conditions. PMA was able to single out various subjects of commerce and, aided by labor unions, to make property subject to assessment to meet labor costs in the same way that the government measures property for tax purposes to meet costs of government. There was no practical restraint on its choice. The unrestrained choice of a measure unrelated to labor costs needs justification to begin with, but is made unjust by the unequal application made possible by Respondents' participation in the PMA control over the market.

The majority refers to the reasonableness of Respondents' activities attested by (1) efforts to change the Mechanization Fund assessments, (2) offers to pass on only part of the assessments, and (3) measurement levies on dues for

*Report of the Commission*

several years without protest. Presumably the statement refers to the second paragraph of Sec. 17, requiring other persons subject [59] to the Act to establish "reasonable regulations and practices", and to activities equated with regulations and practices. There is no question in this dissent as to Respondents' good intentions in seeking a change in the assessment and offering to pass on only part of the assessment. What have been questioned and found wanting are the actual results of Respondents' practices in line with the agreed regulations. The facts show the assessments have not changed, nor have claims against VW for full payment actually been changed. At most the offer to pass on only part of the assessment was a bargaining concession, not a change of conduct: With regard to several years of levy without protest of the PMA dues assessment as distinguished from the Mechanization Fund assessment on a measurement basis, past failure to challenge the practice relative to dues may not be translated into present and future reasonableness of the disparate practices relative to the Mechanization Fund. The past in this case must relate to before November 1961, because around that time VW representatives made known their objections to what was being done to them in regard to the Fund Assessments. (Tr., 151-155) If Respondents make the intended changes, another issue might be presented.

Finding No. 7 is supported.

4. *Observations.* The many complex considerations in this proceeding ultimately funnel themselves down to the single error of PMA in choosing property rather than labor (in terms of man-hours with adjustments to meet disclosed [60] inequities) as a measure. PMA chose the wrong measure for its members' obligation to compensate the working man for displacement from mechanization improvements creating fewer opportunities for work. Praise-

*Report of the Commission*

worthy as these endeavors are, PMA lost sight of the basic consideration that Secs. 16 and 17 of the Act are founded on a policy of protecting property in commerce and protecting its competing owners and the public against unfair competitive practices. Such policy includes protection of the public against unfair market control. Had PMA chosen to follow its minority committee report and avoided the use of the protected property to measure its charges on shippers and on commerce and used instead a labor measure, and property to a less extent, equitably applied, my conclusions about these acts would very likely be the reverse of what they are. With such a measure, any burden would be directly related to and attributable to labor costs and become a just cost of business. Different assessments would be based on genuinely different situations. No description of traffic and no particular person would be singled out as the object of disadvantage. The entrepreneurs' expenses would be related to the working man's production. The measure would be related to compensation for displaced production, would not be subject to unfair market control, and would be just, fair, reasonable, and without prejudice or disadvantage.

CONCLUSION

For the foregoing reasons the Examiner should be reversed in deciding there has been no violation of Secs. 15 or 16 and no failure to comply with Sec. 17 of the Act, and the exceptions should be sustained.

**[61] Commissioner Hearn, Dissenting**

Like the majority, I conclude that the record does not establish violations of sections 16 and 17 of the Act. 'Complainant's automobiles have not been disadvantaged or prejudiced to the preference or advantage of any other automobile shipper, and the assessment of complainant's



*Report of the Commission*

automobiles on a measurement rather than a unit or weight basis, has not been shown to constitute an unreasonable practice relating to the receiving, handling, storing, or delivering of property. Further, although it is asserted that automobiles shall derive only a general or common benefit from the fruition of the PMA-ILWU compacts, there need "be no precise equivalence between the services rendered and the charges." *Evans Cooperage Co. Inc. v. Board of Commissioners*, 6 FMB 415, 419 (1961).

I disagree with the majority solely on the reading of the record in the light of section 15. As a general rule, our long established national policy frowns upon concerted action by members of all segments of our business community. Ocean shipping, forwarding, and terminal operating subject to our jurisdiction have traditionally enjoyed an exemption from this rule where the concerted action is not contrary to our public interest or detrimental to our commerce,<sup>1</sup> and is pre-approved by the Commission. Absent the foregoing, such conduct is contrary to section 15 and is unlawful under the Shipping Act.

As exceptions to our national antitrust policy, proposed agreements must be scrutinized carefully:

The condition upon which such authority [the authority to legalize concerted action] is granted is that the agency entrusted with the duty to protect the public interest scrutinize the agreement to make sure that the conduct thus legalized does not invade the prohibitions of the anti-trust laws any more than necessary to serve the purposes of the regulatory statute. *Isbrandtsen Co. v. United States*, 211 F. 2d 51, 57 (D. C. Cir. 1954).

---

<sup>1</sup> "[T]he Shipping Act specifically provides machinery for legalizing that which would otherwise be illegal under the anti-trust laws." *Isbrandtsen Co. v. United States*, 211 F. 2d 51, 57 (D. C. Cir. 1954).

*Report of the Commission*

[62] It is in this context that the following language of section 15 is so important:<sup>2</sup>

Any agreement . . . not approved . . . by the Commission shall be unlawful, and agreements . . . shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, . . . any such agreement. . . .

Thus, the sole issue to which I address myself is whether respondents, persons subject to the Act, entered into and carried out an agreement, understanding, or arrangement within the purview of section 15 with other members of PMA, many of whom are admittedly common carriers by water or other persons subject to the Act.<sup>3</sup> It is my conviction that the members of PMA entered into and carried out a "co-operative working arrangement" which, as I have noted, required this Commission's approval as a prerequisite to its effectuation under the explicit language of the statute.

---

<sup>2</sup> Unlike the Examiner, I find nothing in section 15 "inane." Nor did the Commission in *Unapproved Sect. 15 Agreements—S. African Trade*, 7 FMC 159 (1962) at page 190, find the phrase "inane" or superfluous:

"Accordingly, section 15 requires—as it has for the 45 years since enacted—the filing of a copy, or 'if oral' a true and complete memorandum, of 'every agreement' covering any of the wide range of anticompetitive activities therein mentioned, 'or in any manner providing for an exclusive, preferential, or cooperative working arrangement.'"

<sup>3</sup> The agreement or agreements between PMA and ILWU are clearly labor-management agreements and consequently are not within the reach of the Act. While these agreements may have triggered the arrangement by the membership of PMA, the PMA-ILWU compacts are irrelevant to the central issue here.

*Report of the Commission*

I agree with the majority's statement that the legislative history of the Act makes it clear that section 15 was intended to apply only to those cooperative working arrangements "which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping . . . public . . .". (p. 6), but I read this record as definitely affecting (1) the shippers of automobiles rate-wise, and (2) the competition [63] among PMA members themselves with respect to the discharge rates that they may offer automobile shippers. While "agreements . . . to pool secretarial workers or share office space" may be co-operative working arrangements not within the scope of section 15 as the majority says at page 7, certainly a working agreement to raise 29 million dollars over a five and one-half year period, through detailed and uniform assessments relating to cargo handled, is a different situation and is hardly akin to a secretary pool in my opinion. Furthermore, it is different not only in size but, more importantly, in character.

The record illustrates that PMA knew the assessment had to be passed on to the cargo, at least to automobiles.<sup>4</sup> A telegram from Brady-Hamilton, one of the PMA members who handled Volkswagens states:

The position of the Committee, that the assessment on unboxed auto is the responsibility of the stevedore to pay, appeared to attempt to release [PMA] from any responsibility, to the extent that the stevedore could be entirely free to absorb all of the assessments if he desired. The cost of this assess-

---

<sup>4</sup> PMA also knew that assessments against Army cargo were passed on. PMA's records show that lest Volkswagen get relief, the Army would be next in line; ". . . they are still querulous about the propriety of such contributions." (Ex. 22).

*Report of the Commission*

ment is so much greater as compared to the stevedoring cost it could never be considered. . . . (Ex. 24).

Marine Terminals, as well, advised PMA on November 29, 1961, (Ex. 25): "There is no way that the contractor could absorb such an increase . . ." and an inter-office PMA memo of December 13, 1961, (Ex. 27) states:

The Committee at present feels that the tonnage formula does not work an inordinate hardship *on the shipper*. . . . (Emphasis added).

In a letter dated March 1, 1961, Marine Terminals advised PMA of its difficulties in collecting contributions to the Mech Fund assessed against Volkswagens:

We have informed them that we at Marine Terminals are merely following out the instructions set forth by the Board of Directors of the Pacific Maritime Association and *therefore are considered only a collection agency in this matter*.

We find ourselves in a very awkward position and wish to be advised of the *committee's decisions on how automobiles will be assessed* and what stand we can take in demanding payment of this assessment. (Ex. 9) (Emphasis added).

[64] The "collection agency" designation becomes more than a unilateral misconception on Marine Terminals' part when PMA's minutes of December 13, 1961, (Ex. 2H) are examined:

Chairman read a communication from the Funding Committee covering the problem of collecting funds *from Volkswagen* due the Mechanization Fund . . . Marine Terminals requested that a letter covering

727a

*Report of the Commission*

this discussion be forwarded to them and that they be *authorized* to bring suit against Volkswagen for the monies due. Marine Terminals also requested that PMA give both legal and moral support on the Volkswagen suit. It was agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel. (Emphasis added).

Again, PMA's minutes of March 14, 1963, (Ex. 2C) show:

On the matter of mechanization assessments Counsel recommended an escrow account for payments by the stevedores *on behalf of Volkswagenwerk*. The Board of Directors this morning took no action to modify its previous position that the contributions be paid currently. (Emphasis added).

In my view, these exhibits<sup>5</sup> reveal a co-operative working arrangement by members of PMA relating to the fixing or regulating of transportation rates, at least so far as automobiles and possibly Army cargo are concerned. It is of no moment that a formal, legally binding contract to assess certain tolls upon cargo has not been produced. "Section 15 is not concerned with formality but with the actual effect of the arrangement." *Unapproved Sect. 15 Agreements—S. African Trade, supra* at 188. The failure of respondents and PMA to get prior approval for the plan from the Commission renders the effectuation of it unlawful. As stated in *Status of Carloaders and Unloaders*, 2 USMC, 761 (1946) at page 766:

---

<sup>5</sup> The exhibits are contemporaneous records and as such are far more persuasive than the after-the-fact, self-serving statements of PMA witnesses to the contrary.



*Report of the Commission*

When carriers or "other persons" undertake, by agreement, to *fix* or *regulate* rates, . . . there must be performed a series of acts under the statute. (1) They must file the agreement with the Commission.

Due to the posture of the record and the narrow question under section 15 presented here, I do not reach the issue of approvability, under section 15, of PMA's plan in furtherance of the laudable, social ends envisioned by its arrangements with ILWU. However, approvable or not, the parties are not relieved of their obligation to secure the approval of the Commission before they attempt to carry it out.

[65] In conclusion, I believe the majority seriously erred in not finding that the respondents, Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) violated section 15 by being parties to, and carrying out, a co-operative working arrangement with other members of intervener PMA without the prior approval of this agency.

By the Commission.

/s/ Thomas Lisi  
THOMAS LISI  
Secretary

(SEAL)

(Order of Commission 1)

729a

**Order of Commission**

(Filed October 13, 1965)

Served  
October 13, 1965  
Federal Maritime Commission

**[1] FEDERAL MARITIME COMMISSION**

No. 1089

---

VOLKSWAGENWERK AKTIENGESELLSCHAFT

v.

MARINE TERMINALS CORPORATION, *et al.*

---

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is incorporated herein by reference, **THEREFORE,**

**IT IS ORDERED,** That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

/s/ Thomas Lisi  
THOMAS LISI  
Secretary

(SEAL)

(Petition for Review 1)

730a

**Petition for Review**

(Filed December 10, 1965)

[1] IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19840

---

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

v.

FEDERAL MARITIME COMMISSION and  
UNITED STATES OF AMERICA,

Respondents.

---

PETITION FOR REVIEW OF AN ORDER OF  
THE FEDERAL MARITIME COMMISSION

*To the Honorable Judges of the United States  
Court of Appeals for the District of Columbia  
Circuit:*

Volkswagenwerk Aktiengesellschaft ("petitioner" or "VW") hereby petitions this Court to review and set aside an Order of the Federal Maritime Commission dismissing a complaint filed by it with that agency alleging violations of the Shipping Act, 1916, in connection with the discharge of vehicles exported by it to this country.

Copies of the Order and of the report of the Federal Maritime Commission incorporated in such Order by reference are attached to the copies of this petition filed with this Court.

731a

*Petition for Review*

[2] NATURE OF PROCEEDINGS

1. This proceeding involves the lawfulness, under the Shipping Act of 1916, as amended (39 Stat. 728, 46 U. S. C., Section 801 *et seq.*), of certain charges for the use of terminal services and facilities, including stevedoring, in connection with the discharge of automobile cargoes at San Francisco and Los Angeles.

2. Petitioner is a shipper of Volkswagen vehicles to the United States West coast. Approximately one-fourth of its Volkswagen vehicle cargoes entering the United States through the Pacific coast ports is carried by common carrier. The balance is transported on vessels chartered by VW. In 1961 and 1962 approximately 40,000 Volkswagen vehicles were discharged annually at these ports.

3. In its complaint before the Federal Maritime Commission ("Commission"), VW named as respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), hereinafter collectively referred to as "MTC". These companies are employed by VW to discharge at the ports of San Francisco and Los Angeles the automobiles sent there by VW by chartered vessels. They perform similar services for common carriers by water with respect to automobile cargoes, including those of VW.

[3] 4. The charges which form the subject matter of VW's complaint to the Commission arise out of arrangements entered into by MTC as members of the Pacific Maritime Association ("PMA"). PMA made itself a party to the proceeding by intervening.

*Petition for Review*

5. PMA is an organization formed by common carriers serving the Pacific coast and companies engaged in furnishing stevedoring and terminal services and facilities at ports along this coast. It deals collectively with labor problems of its members. The by-laws of PMA ensure that ship operators, and more specifically liners, control its affairs. VW is not a member of PMA.

6. In 1960-61, PMA entered into collective bargaining agreements with the International Longshoremen's and Warehousemen's Union in which, in exchange for more efficient operations on the waterfront, it undertook on behalf of its membership to pay twenty-seven and one-half million dollars over a period of five and one-half years into a Mechanization and Modernization Fund ("Mech Fund") for the benefit of longshoremen, marine clerks and similar employees. These agreements exclude the union from any voice in the method by which this sum is to be raised. PMA reserved for itself alone the power to decide from whom, and how, this money is to be collected. [4] It is PMA's exercise of this reserved power that gives rise to the present proceeding, not its collective bargaining agreements which VW recognizes as a most praiseworthy achievement in labor relations.

7. By agreement of the membership of PMA the monies required for the Mech Fund are to be raised by a system of assessments against every ton of cargo loaded or discharged by the members. For all commodities, except automobiles, the ship's manifest determines how such tonnage is to be measured, that is, whether by measurement or by weight. The tonnage thus shown on the manifest is then multiplied by an amount fixed by PMA for that type of cargo to arrive at the amount to be paid PMA for purposes of the Mech Fund. Roughly speaking, each ton of bulk cargo pays 5-1/2 cents a ton, and each ton of general cargo, during the period of the proceedings below, paid 27-1/2 cents and thereafter,



733a

*Petition for Review.*

28-1/2 cents a ton. Automobiles; however, are an exception and they are assessed by measurement rather than by weight, regardless of how they are manifested. By measurement, the Volkswagen vehicles of petitioner have a tonnage approximately ten times as great as they do by weight. In manifesting automobiles, sometimes one measure and sometimes the other is employed. By requiring the tonnage of automobiles [5] to be reported by measurement rather than by weight, regardless how manifested, PMA ensured that the highest possible assessment would be levied on every automobile discharged on the Pacific coast. Under this assessment formula, the cost of discharge of automobiles is increased about ten times as much as is the average cost of discharge of other general cargo, 26 percent as against 2.2 percent. Direct labor costs are affected in the same proportion.

8. No benefits from the Mech Fund are expected to accrue to automobiles in proportion to the burdens imposed. Stevedoring of cars has always been an efficient and economical operation. Auto shippers will, however, receive some general benefits such as freedom from strikes or slowdown, from the Fund plan.

9. The agreements, understandings and arrangements among the members of PMA, pursuant to which charges for the Mech Fund have been assessed have never been submitted to the Federal Maritime Commission for its approval as cooperative working arrangements among carriers and other persons subject to the Shipping Act of 1916 in accordance with section 15 of that Act (39 Stat. 733, 46 U. S. C., section 814). The Commission has not given its approval to these arrangements pursuant to section 15 of that Act.

[6] 10. MTC has attempted to pass on to petitioner the charges for the Mech Fund assessed by PMA for the ve-

*Petition for Review*

hicles shipped by petitioner through the port facilities of MTC.

11. Petitioner has declined to pay the special charges for the Mech Fund on the grounds that the charges could not lawfully be made without prior approval of the aforesaid cooperative working arrangements under section 15 of the Shipping Act of 1916; that the charges are in violation of sections 16 and 17 of the Shipping Act of 1916 (39 Stat. 734, 46 U. S. C., sections 815 and 816) by singling out petitioner's automobiles for excessive charges.

12. VW applied without success to PMA for modification of its inequitable and unfair formula.. Any change in the formula reducing the assessment on automobiles would not be in the self interest of the majority of members of PMA since, in order to raise the lump sum needed for the Mech Fund, such reduction would have to be balanced by an increase in the amount paid on cargo carried by the shipping lines which dominate PMA.

13. Before the Mech Fund, VW paid approximately \$10.45 per vehicle for stevedore and terminal handling. The margin of profit to the stevedore or terminal operator [7] was one dollar or less. Since the PMA assessment for the Mech Fund averages \$2.35 per vehicle, it cannot be absorbed by the stevedore or terminal operator out of profit.

14. As a consequence of petitioner's refusal to pay the charges for the Mech Fund, MTC made no payments to PMA on the discharge of Volkswagen vehicles arriving by chartered vessels. However, payments have been made into the Mech Fund by MTC and other stevedores and terminal operators on all Volkswagen automobiles arriving at the Pacific coast by common carrier, with some minor exceptions.

735a

*Petition for Review*

15. PMA has filed a libel against MTC and others in the United States District Court for the Northern District of California, Southern Division, for recovery of the assessments on the discharge of Volkswagen vehicles arriving by chartered vessel. MTC joined petitioner as a party by interpleader. Upon request of petitioner, the District Court stayed the proceedings pending decision by the Federal Maritime Commission of the questions raised by petitioner's objections to the charges. Thereafter, petitioner filed the complaint with the Federal Maritime Commission in which the order was entered, which is made the subject of this review. The complaint charged violations of sections 15, 16 and 17 of the Shipping Act.

[8] 16. Section 15 of the Shipping Act of 1916 provides, in part:

"That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; . . . controlling, regulating, preventing, or destroying competition; . . . or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements."

An agreement within section 15 requires approval by the Commission before it can be carried out lawfully. Petitioner alleged in its complaint to the Federal Maritime Com-

*Petition for Review*

mission that MTC was a party to an agreement covered by this section and that since this agreement had never been filed nor approved by the Commission, it could not legally be executed and carried out by MTC.

17. Petitioner further contended that the agreement could not be approved by the Commission after it was filed because it is unjustly discriminatory and unfair as between shippers and importers, operates to the detriment of the commerce of the United States, is contrary to the public interest and is in violation of sections [9] 16 and 17 of the Shipping Act, 1916, in that it imposes upon automobile cargoes a disproportionately high share of the costs of the Mech Fund.

18. PMA's formula and the assessments made thereunder were attacked as subjecting petitioner and automobile cargoes to undue and unreasonable prejudice and disadvantage in violation of section 16 of the Shipping Act. Furthermore, MTC was alleged to be engaged in an unjust and unreasonable practice related to and connected with receiving, handling, storing and delivering of property in violation of section 17.

19. Hearings were held and evidence taken by a Hearing Examiner on the complaint. In an initial decision rendered on June 4, 1964, setting forth findings of fact and conclusions, the Examiner found no violations of sections 15, 16 or 17. Although he found that there existed a "cooperative working arrangement" among "persons subject" to the Act, he held that such cooperative working arrangement was not within the purview of section 15 because, in his view, it did not pertain to ocean transportation and was not in the same general class as those specifically enumerated by that section.



*Petition for Review*

20. The Examiner found no violation of section [10] 16 because there was no discrimination as between Volkswagen automobiles and other automobiles and there is no other cargo classification in competition with automobiles. He likewise exonerated MTC of any violation of section 17 on the ground that MTC was justified in passing on "an operating expense applicable to the discharge of automobiles."

21. Petitioner filed exceptions to the conclusions, findings and statements in the initial decision and a brief in support to which replies were filed. Oral argument thereon was heard by the Commission.

22. Thereafter, the Commission issued its Order dismissing the complaint. Incorporated in this Order, by reference, is the Commission's report stating its conclusions and decision. Two Commissioners dissent. The report does not adequately state whether the Commission adopts or rejects the findings of the Examiner, or whether it accepts or rejects petitioner's exceptions to such findings.

23. The Commission found nothing "in the agreements of record in this proceeding which brings them within the purview of section 15." That section it held, applied "only to those agreements involving practices which affect that competition which in the absence of the [11] agreement would exist between the parties when dealing with the shipping or travelling public or their representatives." In the view of the Commission, the agreement among the membership of the PMA regarding the amount to be paid into the Mech Fund on each ton of cargo loaded or discharged did not satisfy these requirements.

24. For this agreement to be embraced within section 15, the Commission held there would have to exist "an addi-



*Petition for Review*

tional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators." It found the record "devoid of evidence showing the existence of such an additional agreement."

25. The Commission sustained the Examiner in finding no violation by MTC of sections 16 or 17.

26. Commissioner Patterson dissented from all the Commission's conclusions. He found that MTC had violated sections 15, 16 and 17 of the Act. Commissioner Hearn concurred with the majority in finding no violations of sections 16 and 17 but held that MTC had violated section 15 by being parties to, and carrying out, a cooperative working arrangement with the other members [12] of PMA without the prior approval of such arrangement by the Commission. However, he did not reach "the issue of approvability," under that section of PMA's plan.

JURISDICTION AND VENUE

27. The jurisdiction of the Court is invoked under section 31 of the Shipping Act of 1916, as amended, 39 Stat. 738, 46 U. S. C., section 830, sections 2 and 9 of the Judicial Review Act, as amended, 64 Stat. 1129 and 64 Stat. 1131, 5 U. S. C., sections 1032 and 1039 and section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C., section 1009.

28. VW is adversely affected and aggrieved by the Order of the Commission sought to be set aside dismissing its complaint and terminating the proceeding in that it is a shipper on common carriers which are paying the assess-

739a

*Petition for Review*

ments levied under the arrangement under attack, it is a charterer and employer of stevedoring contractors and terminal operators which are parties to that arrangement and which are engaged in the acts and practices and imposing the charges challenged in the Commission proceeding and it is the complainant in such proceeding.

29. Section 2 of the Judicial Review Act, 5 U. S. C., [13] section 1032, authorizes the filing of petitions for review of orders of the Federal Maritime Commission in Courts of Appeals of the United States. Section 3 of that Act, 5 U. S. C., section 1033, permits the filing of the petition in the United States Court of Appeals for the District of Columbia Circuit. Thus, venue is proper.

GROUND ON WHICH RELIEF IS SOUGHT

30. In issuing the Order of which review is sought, the Commission disregarded and violated its obligations under the Shipping Act of 1916 and the Administrative Procedure Act.

31. The Shipping Act of 1916 governs the conduct of common carriers by water and of any other persons carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water. The Act uses the term "other person[s]" to cover the latter group. MTC are "other person [s]" within the meaning of the Act. All, or substantially all the other members of PMA are likewise covered by the Shipping Act, either as "other person[s]" or as common carriers by water.

*Petition for Review*

[14] 32. The Commission erred in finding that the cooperative working arrangement among MTC and the other members of PMA regarding collection of the Mech Fund is not subject to section 15 of the Shipping Act of 1916. Section 15 of the Shipping Act embraces all concerted action by common carriers and related persons affecting the entire spectrum of services connected with marine transportation. The only interpretation of section 15 which is consistent with its legislative history and with its past administrative construction is that whenever persons subject to the Shipping Act engage in concerted action, they bring themselves within the reach of that section. The cooperative working arrangement among the membership of PMA affected the loading and discharge of ocean cargo and was subject to section 15.

33. The Commission erroneously concluded that section 15 of the Shipping Act embraces only agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public or their representatives.

34. Even under the standard adopted by the Commission it erred in failing to find that an agreement among stevedores and terminal operators to impose an [15] artificial and unwarranted charge upon the discharge of every automobile unloaded by them is not an interference with competition.

35. In view of the obligation of the Commission to investigate complaints filed with it setting forth violations of the Act, the Commission erred in dismissing petitioner's complaint because it viewed the record as devoid of evi-

*Petition for Review*

dence of the existence of an agreement by the PMA membership to pass on all, or a portion of, its assessments to the carriers and shippers served by the terminal operators. If the Commission deemed the existence of such an agreement critical to the issue of a violation of the Act, it was under an obligation to investigate further.

36. The Commission erred in holding in effect that an explicit agreement to pass on the PMA assessment was necessary to invalidate the cooperative working arrangement among the membership of PMA since irrespective of whether such an explicit agreement existed or not, such arrangement in operation, due to economic necessity, was the exact equivalent of, and had the same economic effect, as an explicit agreement and such result was intended and anticipated by PMA membership in adopting such arrangement.

[16] 37. The Commission erred in finding no violation of section 16 of the Act by MTC. The fact that petitioner's automobiles have not been subjected to prejudice or disadvantage as compared to other automobiles is not decisive. Petitioner's automobiles have been discriminated against in comparison with other traffic by MTC in execution of the PMA agreement. Whereas all other traffic is assessed in accordance with the way it is manifested, petitioner's automobiles are assessed on the basis of measurement tonnage, regardless how manifested. Furthermore, a burden disproportionate to any benefit received has been imposed upon petitioner's automobiles in comparison with other traffic.

38. The Commission erred in finding no violation of section 17 of the Shipping Act of 1916. Section 17 requires every common carrier by water in foreign commerce and

*Petition for Review*

every other person subject to the Act to "establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property." MTC is a person subject to the Act. MTC, by reason of its membership in PMA, violated section 17 in:

(a) adopting an unfair and unjust method of allocating to property received, handled, stored and [17] delivered by it a common cost, i.e., the Mech Fund;

(b) accepting the obligation to make, and making, regular monthly payments to PMA in accordance with such allocation; and

(c) including in their stevedoring rate the amount allocated pursuant to the method adopted.

39. The Commission erred in disregarding and failing to rule on petitioner's contention that entry by MTC into the agreement with PMA regarding the allocation of the cost of the Mech Fund and their execution of such agreement were unreasonable practices under section 17.

40. The Commission erred in interpreting section 17 as permitting users of the same facility to be charged amounts not directly related to the benefits derived therefrom so long as each one receives some "substantial benefits."

41. The Commission erred in interpreting section 17 as applicable to the charges imposed upon petitioner only in the event that it could be shown that they were imposed because of a design deliberately to burden petitioner more than other users of stevedores and terminal facilities with the cost of the Mech Fund. But [18] even if this inter-



743a

*Petition for Review*

pretation had been correct, the Commission erred in failing to find such a design present here.

42. The Commission violated its obligations under section 8 of the Administrative Procedure Act (5 U. S. C., section 1007) in failing to make findings upon the material issues of fact and law presented; ~~in failing to rule adequately on petitioner's exceptions to the decision of the Hearing Examiner;~~ and in failing to state conclusions which have a rational basis in law or fact in support of its rulings.

43. The Commission's Order, of which review is sought, is based upon statements which are unsupported by substantial evidence, is arbitrary and capricious and is not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, petitioner prays:

(1) That copies of this petition be served upon the respondent agency and upon the Attorney General of the United States in accordance with section 4 of the Judicial Review Act, 5 U. S. C., section 1034;

[19] (2) That a transcript of the record upon which the Order in question was entered be certified and filed in this Court in accordance with section 6 of the Judicial Review Act, as amended, 5 U. S. C., section 1036 and with 28 U. S. C., section 2112;

(3) That this Court review the Order of the Federal Maritime Commission dismissing petitioner's complaint;

(4) That upon review, this Court set aside said Order;

(Petition for Review 19-20)

744a

*Petition for Review*

(5) That this Court find that the Commission's Order is contrary to law and in derogation of the Shipping Act, 1916, and of the Administrative Procedure Act;

(a) That this Court find that MTC has violated sections 15, 16 and 17 of the Shipping Act of 1916; and

(6) That petitioner have such other and further relief as may to the Court seem just and proper.

[20] Respectfully submitted,

/s/ Richard A. Whiting

/s/ Robert J. Corber

STEPTOE AND JOHNSON,

1250 Connecticut Ave. N. Y.,

Washington, D. C. 20036,

Attorneys for Petitioner.

HERZFELD & RUBIN,

Office and Post Office Address,

40 Wall Street,

New York, N. Y. 10005,

*of Counsel.*

PILLSBURY, MADISON & SUTRO,

Office and Post Office Address,

225 Bush Street,

San Francisco 4, California

*of Counsel.*

(Stipulation re Issues, etc. 1)

745a

**Stipulation as to Issues and Procēdures  
to be Followed**

(Filed March 8, 1966)

[1] IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
No. 19840

---

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner

*against*

FEDERAL MARITIME COMMISSION and  
UNITED STATES OF AMERICA,

Respondents

PACIFIC MARITIME ASSOCIATION and  
MARINE TERMINALS CORPORATION,

Intervenors

---

Subject to the approval of the Court, it is hereby stipulated and agreed between the parties, through their respective counsel, that the issues and the subsequent procedures to be followed herein shall be:

**I**

**ISSUES**

1. In the view of petitioner the following issue is presented:

(Stipulation re Issues, etc. 2-3)

746a

*Stipulation as to Issues and Procedures  
to be Followed*

[2] Whether Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (hereinafter collectively referred to as "MTC") are "carrying on the business \* \* \* of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water" so as to be subject to the Shipping Act of 1916, as amended, as "other person[s]."

2. Petitioner, Respondents and Intervenor Pacific Maritime Association (hereinafter "PMA") agree that the following issue is presented:

Did the Commission err in determining that no agreement subject to Section 15 existed between MTC and other members of PMA with respect to the assessments referred to on pages 2 and 3 of the Commission report?

MTC would state the above issue as follows:

Did the record permit the Commission to find and conclude in the proper exercise of its discretion, that, assuming MTC to be a person subject to the Act, no additional agreement subject to Section 15 existed between it and other members of PMA or that no violation of Section 15 had been shown?

[3] 3. Petitioner and Respondents agree that the following issue is presented:

Did the Commission err in determining that MTC, in connection with the assessments referred to above, did not violate the prohibitions of Section 16 First against making or giving undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or against subjecting any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever?

*Stipulation as to Issues and Procedures  
to be Followed*

It is the position of Petitioner that this issue should properly be phrased so as to refer to conduct of MTC in conjunction with others as well as by themselves.

PMA and MTC would state this issue as follows:

Did the record permit the Commission to find and conclude, in the proper exercise of its discretion, that MTC, assuming it to be a person subject to the Act, did not, by including in its charges to Petitioner its full labor costs, violate the prohibitions of Section 16 against making [4] or giving undue or unreasonable preference to any person or description of traffic or against subjecting any person or description of traffic to undue or unreasonable prejudice or disadvantage?

4. Petitioner and Respondents agree that the following issue is presented:

Did the Commission err in determining that MTC, in connection with the assessments referred to above, did not violate the provisions of Section 17 requiring the establishment, observance and enforcement of just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property?

It is the position of Petitioner that this issue should properly be phrased so as to refer to conduct of MTC in conjunction with others as well as by themselves.

PMA and MTC would state this issue as follows:

Did the record permit the Commission to find and conclude, in the proper exercise of its discretion, that MTC, assuming it to be a person subject to the Act, did not, by including in its charges to Petitioner its full labor costs, violate the [5] prohibitions of



*Stipulation as to Issues and Procedures  
to be Followed*

Section 17 against unreasonable practices relating to the handling of property?

5. All parties agree that the following issue is presented:

Whether the Federal Maritime Commission in Docket No. 1089 complied with the provisions of Section 8 of the Administrative Procedure Act (5 U. S. C. Section 1007)? In particular, did the Commission make findings upon each of the material issues of law and fact presented and did it rule adequately on Petitioner's exceptions to the decision of the Hearing Examiner?

6. All parties agree that the following issue is presented:

Whether the conclusions of the Commission in the order dismissing Petitioner's complaint support its order and are, in turn, supported by adequate findings, substantial evidence in the record and rational bases in the law?

II

PROCEDURES WITH RESPECT TO PRINTING OF THE  
JOINT APPENDIX AND USE OF UNPRINTED PORTIONS  
OF THE RECORD

In preparing and printing briefs, record [6] references shall be to the pages of the documents before the agency as certified to the Court. The joint appendix shall be printed with the page numbers of these documents as certified in this Court appearing at the place where each new document page begins on the printed page of the joint appendix, and running heads showing the document pages appearing thereon shall be printed at outer top corners of each page of the printed joint appendix. The usual numerical pagina-

749a

*Stipulation as to Issues and Procedures  
to be Followed*

tion of the printed joint appendix will appear in the center of the top of the page.

Parties may serve briefs in typewritten or mimeographed form or printer's proofs, provided that printed copies of such briefs shall thereafter be filed with the Court and served upon opposing parties within ten days after the due date of the reply brief. In all instances, at least three copies of each brief shall be served on counsel for each opposing party.

Designation of the portions of the certified record to be reproduced in the joint appendix shall be made within five days after the briefs of Respondents and Intervenors are filed.

Within ten days after the due date of the reply brief, the Petitioners shall cause the joint appendix to be printed and filed with the Court and served upon the Respondents.

[7] Any party and the Court, at and following the hearing in this case, may refer to any portion of the original transcript of record herein which does not appear in the joint appendix to the same extent and effect as though such portions of the transcript had appeared in such appendix.

.....  
WALTER H. MAYO, III, Esquire  
Federal Maritime Commission  
1321 H. Street, N. W.  
Washington, D. C. 20573

.....  
IRWIN A. SEIBEL, Esquire  
United States Department of Justice  
Washington, 25 D. C.

(Stipulation, re Issues, etc. 7)

750a

*Stipulation as to Issues and Procedures  
to be Followed*

.....  
RICHARD A. WHITING, Esquire  
ROBERT J. CORBER, Esquire  
1250 Connecticut Ave., N. W.  
Washington, D. C. 20036  
Attorneys for Petitioner

.....  
EDWARD D. RANSOM, Esquire  
LILLYCK, GEARY, WHEAT, ADAMS  
& CHARLES  
311 California Street  
San Francisco, California 94104  
Attorney for Intervenor Pacific  
Maritime Association

.....  
JOHN EDWARD HURLEY, JR., Esquire  
WILLIAM W. SCHWARZER, Esquire  
MCCUTCHEEN, DOYLE, BROWN, TRAUTMAN  
& ENERSEN  
601 California Street  
San Francisco, California 94108  
Attorneys for Intervenor Marine  
Terminals Corporation

[fol. 92]

BEFORE THE FEDERAL MARITIME COMMISSION  
Docket No. 1089

---

In the Matter of:

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

v.

MARINE TERMINALS CORPORATION, et al.

---

EXCERPTS FROM TESTIMONY

• • • • •

[fol. 121]

---

PETER N. TEIGE for Complainant, Direct (continued).

By Mr. Madden:

Q. Now, going back to your so-called new fund committee in the material handed me yesterday, pursuant to the subpoena, I have some rough notes handed me entitled, "First meeting, New Fund Committee," dated 2/14/61.

Mr. Ransom: Off the record.

Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: On the record.

By Mr. Madden:

Q. Do you know who made those notes?

A. I believe they were made by Mr. Lancaster, but I am not positive of that. Mr. Lancaster was a member of the staff of Pacific Maritime Association who attended

most of these meetings and acted as sort of a secretary, and staff back-up man, for the committee.

Q. Do you recall what was discussed at that first meeting where, at the bottom of the first page and the top of the second one, it says, "Non-member assessments," and "autos-manifest"?

A. Well, those are two separate subjects, as you see. This lists a sum of items that were discussed at the meetings.

Q. Yes.

A. And the first one you mentioned, non-member assessments, would I believe have been a discussion about concern expressed by some members of the committee that the assessment made by the ILWU against uses of ILWU labor on the Pacific Coast who were not members of PMA might conflict with hours that we were assessing against members, and there was I believe a general discussion of that problem.

I don't recall any action being taken, but more just expressions of concern.

The other subject at the top of the second page of the exhibit refers to the subject that we are discussing here today, namely, the appropriate formula to be applied for the collection of contributions to the fund on unboxed autos, and I assume it was raised by the letter of January 17, 1961, from Winchester Agencies, and the letter from Hanseatic Vaasa.

Q. There is a question after that, "Autos-Manifest." Was there some question raised at that meeting on whether vehicles should be assessed as manifested?

A. I don't recall that. My recollection, such as it is, is that the suggestions or discussions on this subject were about the fairness of applying the PMA tonnage formula to autos.

Q. Now, I note just below that there is a remark, "Recommend empty containers on weight and contents as manifested."



[fol. 123] Q. A general discussion?

A. A general discussion. It was not a discussion about anybody being in restraint of trade but, rather, making [fol. 124] the group aware of that problem.

\* \* \* \* \*

[fol. 140] Cross examination.

By Mr. Ransom:

Q. Mr. Teige, on that committee of yours, there was American President Lines represented, Pacific Far East [fol. 141] Lines, and States Lines. Do any of those who are carriers also perform terminal activities?

A. American President Lines does perform terminal services, both for itself and in a few instances for others. It is my understanding that the same is true of Pacific Far East Line and States Steamship Company.

In any event, I do know that they perform their own terminal services for their own operations.

Q. And the terminal's 15 cents per manhour would be paid by them as the terminal company?

A. Yes, they would pay it as the direct employer of the terminal services employees.

Q. The change relating to adding clerks, did that have anything whatever to do with the Volkswagen situation?

A. No, it did not.

Q. You have frequently in your testimony, Mr. Teige, used the expression, "Automobiles are a measurement cargo."

Would you explain what you mean by that?

A. Well, I mean by that that in freighting them or charging freight rates for the carriage of automobiles in a berth trade, that since there are more measurement tons in an automobile than weight tons, they would normally be freighted on a measurement ton basis.

For example, a Volkswagen sedan I believe runs something over eight measurement tons, and runs in the neighborhood [fol. 142] of less than one weight ton.

Q. And would that same situation apply to all automobiles, to your knowledge? They are a measurement ton type cargo?

A. They would be in the typical foreign trade service.

Q. Aside from automobiles, when you speak of a measurement cargo as opposed to a weight cargo, is that expression related to its density or the amount of air in it, or what?

A. Well, it has a relationship, or is a relationship of bulk to weight.

Q. What would you call lead?

A. It would normally be a weight cargo.

Q. Furniture?

A. I beg your pardon?

Q. Furniture?

A. Normally it would be a measurement cargo.

Q. What trades is American President Lines in?

A. Well, we are in many trades throughout the world, for the reason that, in addition to having a purely trans-Pacific freighter service, we have a service that goes west-bound around the world which takes it into many trades, and we also have a service from the Atlantic, United States Atlantic Coast through the Panama Canal to California, [fol. 143] and on to Malaya, and Indonesia, and back to California through the Panama Canal to the United States East Coast.

Q. When you spoke of American President Lines, in answer to a question by Mr. Madden, that most of APL's cargo is on a measurement ton basis, were you speaking of any particular service or of the whole around-the-world venture?

A. I was thinking of most all of the trade in which we participate. There are a few trades that run to heavy bulk or steel items that might be thought of as weight trades, but there are not many.

Q. You were asked what protests were received in connection with automobiles, and you responded that there

were two carriers. I think you named Wallenius Lines and Hanseatic Vaasa Lines, as well as some stevedores.

Do you know of any protests regarding automobiles that were made that did not originate with the carriage of Volkswagens?

A. I do not. Some of the statements made by the stevedores were general in nature, but from my knowledge of the background of their protest, and from my knowledge of what later contact the committee had with the protestants, it is my opinion that all of the protests on unboxed vehicles came from the carriage of Volkswagens.

[fol. 152] Q. Following the meeting, and I am referring to Exhibit No. 26, now, you received a letter from Mr. Curtis which put down in writing some of the contentions [fol. 153] made on behalf of the Volkswagenwerk people, isn't that correct?

A. Yes.

Q. Now, they had some suggestions in there as to what they thought might be done. I—as I understand it, the first suggestion, which was that automobiles or that instead of a tonnage assessment, there ought to be some kind of a unit assessment.

A. Yes.

Q. Well, what considerations did the committee give to that, and what did they think of it?

A. Well, I think the problem with that suggestion, is that it didn't really help the committee very much in deciding the issue, because if you were to accept a unit assessment you would still have to decide what the assessment would be, and we would again be back in groping for a solution to the problem Volkswagen presented to us that would not upset the overall program.

Q. Supposing you accepted a unit basis for all cargo, any piece of cargo would be assessed at a certain amount. What would that do to you?

A. Well, I am sure they didn't intend that, but if you did have such a system you would have units that would

be tiny boxes, and you would have units that would be locomotives, and obviously the function of the fund committee in that system then would be to take every single unit, and [fol. 154] on some principle—and I believe from what I have said here today you see that this would be a rather Solomonic act that would have to take place.

You would have to, for each unit, determine what charge should be made for the fund, taking into account all these various factors that have been mentioned.

Q. If you took the unit basis, because one bit of cargo asked for it, did you consider that it might result in other cargo asking for a unit basis?

A. We had real concern about their request in general that it would be upsetting and lead to a general running attack on the whole system.

Q. Now, they had another suggestion which related to the percentage of cargo handling expense, and one related to a percentage of total manifest freight.

A. Yes, sir.

Q. What did the committee do with that and consider about it?

A. Considering first the proposal that the assessment be based on a fixed percentage of the total cargo handling expense, that proposal was essentially a manhour proposal because virtually all of the cargo handling expense, with some qualification, is payment of wages to dock labor.

As I have indicated previously in my testimony, a man-hour type of assessment was not considered appropriate [fol. 155] by the committee or the membership. The other suggestion is that the assessment be based on a fixed percent of the total manifest freight. This would be a different and entirely new method than any of the PMA had used before, and it could lead to some odd results, though possibly any system in this field does, but bear in mind that the freight rate charged for commodities carried by ocean carriers is determined on a wide variety of bases, including what the traffic will bear, discharging or loading costs in other countries, the measurement, fre-



quently the claims potential of the cargo and, of course, subject to fluctuation where there are rate wars, it not being uncommon for cargo to be rated at less than half its former rate over a period of a few weeks, if there is a rate war.

It seemed to us that proposal, while it was a system, unlike the unit suggestion which really didn't help us, would create more headaches than it would solve and would not necessarily, as I see it, involve Volkswagen's problem, depending on how the formula was worked out, but I believe that a Volkswagen, at least in a berth trade, is rated something over \$200 an automobile, and I would question whether this would solve their problem.

But in any event, that wasn't the test. The test was, was there a system or general application which would be satisfactory for the industry, and the committee didn't [fol. 156] think so.

[fol. 158] Q. Does American President Lines carry any unboxed automobiles, Mr. Teige?

A. American President Lines does carry unboxed automobiles.

Q. And on what terms, berth terms or FIO?

[fol. 159] A. Where the automobiles are moving commercially, that is, shipped by commercial shippers, they are carried on a berth term basis. Where military unboxed vehicles are involved, they are carried on an FIO basis. That is, the military loads and discharges the vessel.

Q. Do you know from your knowledge in the committee, or otherwise, whether most liner operators have the same arrangement with respect to the carriage of unboxed automobiles; that is, they are carried on berth terms, except for the military?

A. Well, that is my understanding.

Q. How are the rates for the transportation of cargo set in liner operations, Mr. Teige?

A. In the foreign trades, most common is the method for the establishment of ocean freight rates through freight



conferences, which are associations in effect of carriers, in a particular trade, who have banded together for the purpose of jointly agreeing on the rates to be charged for the carriage of ocean cargo in the trade in which they are operating, and in the U. S. foreign trades those conferences have to be approved by the Federal Maritime Commission.

Typically, in a freight conference, the lines will establish by agreement the procedure whereby these rates will be determined, either by a majority vote or some other method, and then they place these rates in a tariff which is then [fol. 160] the tariff used by the carriers in the trade.

There are some trades that do not have conferences either because the conferences have disintegrated through competition or because maybe there are only one or two carriers in the trade.

Where that is the case, then each carrier independently determines its own rates, and would publish its own tariff. In the off-shore domestic trades, those rates are governed by the—and that is off-shore domestic United States trades—those rates are governed by the Federal Maritime Commission.

Q. How many conferences in their round-the-world services does American President Lines belong to, roughly?

A. My recollection is, it is some 30 or 40 conferences. The reason for that is that the conferences typically cover one trade between two countries, in one direction, so there are a wide variety of conferences, and many of those would be in the round-the-world service, foreign to foreign conferences.

Q. And not FMC regulated?

A. That is right.

Q. Do you belong to any conference on the Europe to the United States trade?

A. Yes, we belong to a conference from the Mediterranean to the Pacific Coast.

•   •   •   •   •   •   •

[fol. 181]

FRED R. SMITH for Complainant, Direct (continued).

By Mr. Madden:

Q. How long have you been discharging Volkswagens?

A. We had the original contract when they first started on the Coast, but I couldn't remember the exact day.

Q. Has it been as long as five years?

A. I believe it has been between five and six years.

Q. Do you discharge other automobiles?

A. Yes, sir.

Q. For whom?

A. Other steamship lines and other types of automobiles, numerous types and numerous companies.

Q. In the five to six years that you have discharged vehicles for Volkswagen, have there been any substantial improvements that you have been able to make in the method of discharge for the purpose of saving time and money?

A. Yes, we have improved on types of gear and methods of handling from experience, which develops over the years [fol. 182] from the acts of the stevedores who start out first, and ultimately gets to a more perfected operation.

Q. Has there been any change in the method?

A. No, sir.

Mr. Ransom: Excuse me, was that part of your question, or part of the testimony? I didn't understand.

Examiner Theeman: Would you read back the last two questions and answers, please.

(Record read.)

Mr. Ransom: Thank you.

By Mr. Madden:

Q. Is the improvement a result of more familiarity on the part of the stevedore with the method of removing the vehicle from the vessel to the dock, or have there been improved procedures?

A. It has been improving the operation within the general method of the discharging of the vehicles.

Q. Has the type of carrier that has brought those vehicles, Volkswagens, contributed to that improvement?

A. I would say it has assisted in it a degree, such as maybe the vessel might have a hatch that comes off more efficiently or faster than some other type of vessel.

[fol. 191] Cross (continued).

By Mr. Zimmerman:

Q. Well, let me go back a moment. You have indicated that you do stevedoring for both common carriers and for Volkswagenwerk itself, and on those automobiles you have an assessment in each case.

That is, you have assessments where the automobiles you had were for common carriers, and you also have assessments for the automobiles you have handled for Volkswagenwerk?

A. Yes.

Q. Now, with respect to the mechanization fund assessments on automobiles that you have handled for common carriers, have you ever charged any part of those assessments to Volkswagenwerk?

A. Not to my knowledge, no, sir.

Q. Have you ever charged any part of the assessments for handling autos for Volkswagenwerk to the common carriers?

A. No, sir.

[fol. 197] Q. When you made the protest which you did make, was that at the request of the Volkswagen people?

A. I assume it was. Again, I was here on these particular documents, but jointly I assume, that we did the best we could to get what we thought at that time an equal amount of consideration in the M&M fund.

Q. You haven't answered my question, Mr. Smith. Did you have a request from Volkswagen to make a protest?

A. Oh, yes, yes, sir.

Mr. Ransom: That is all.

Redirect examination.

By Mr. Madden:

Q. Mr. Smith, when you are discharging Volkswagens, does your company furnish any equipment or facilities that are used in the discharge?

A. Yes, sir.

Q. What are they?

A. Slings, bridles, blocks or tools and equipment to let go of the lashing, whatever is necessary.

Q. Are these slings of any special nature for Volkswagens, or are they just general slings?

A. They are special.

Q. They belong to your company?

A. Yes, sir, purchased by the company.

[fol. 205]

ELLET G. HORSMAN for Complainant, Direct (continued).

By Mr. Madden:

Q. Now, the commodity rate, according to the stevedoring order, includes opening and closing of hatches, rigging and unrigging, opening of cargo hatches, unlash and unchalking of cars, waiting time of 30 minutes or less, whether in stevedore's control or not, but breakdown of ship's gear excepted; travel time, and transportation of equipment of longshoremen to and from vessel; supply of discharging gear in accordance with Volkswagenwerk instructions; ten days free storage; the stevedores will provide all necessary stevedoring labor, including winchmen, hatch tenders, tractor operators, also foremen.

and such other stevedore supervision as is needed for the proper and efficient conduct of work.

Checking, clerking and super cargo; public liability and property damage insurance, including third party risk, in respect of injuries arising from stevedoring operations; also, taxes and Pacific Maritime Association assessments; and for handling cars from ship's tackle to place of rest, \$6.00 per car, are to be collected from consignees and credited to vessel within the disbursements account; and this contains a remark that, "Wharfage on cars at \$3.00 per 2,000 pounds for uncatered cars to be for consignee's account."

Now, this stevedoring order refers to Marine Terminals Corporation in San Francisco.

A. Yes.

Q. Now, is this the same type of service that is rendered [fol. 207] in Los Angeles?

A. Yes, this is a uniform stevedoring order for the Pacific Coast—this is uniform for California.

Q. In fact, then, in your unit rate for discharging Volkswagens out of chartered vessels, upon the order of Volkswagenwerk, you performed services which include removing the vehicle from the vessel to the dock, across the dock to a storage area, is that correct?

A. Yes.

Q. Including ten days free storage in the area?

A. The ten days free storage is an item that is in the Harbor Board's tariff, and the tariff states that all commodities will receive ten days free storage, inbound cargo.

Q. In the storage area, do you do any sorting of the cars as they come off the vessel?

A. We do, sir.

Q. And that is performed by your company's employees?

A. Yes, sir, the dock gangs.

Q. Dock gangs?

A. Yes. That is not a function of the ship. It is the function of a dock operation.



Q. Now, some of your gangs work exclusively aboard the ship, do they?

A. Yes, sir.

[fol. 208] Q. And others—

A. On the dock.

Q. On the dock?

A. Yes, sir.

Q. But they are all members of ILWU, are they?

A. That is correct.

Q. And your checkers and clerks are also members of ILWU?

A. Yes, sir.

Q. Now, do you perform similar services for any of the common carriers who bring Volkswagens to San Francisco or Long Beach?

A. Yes, sir.

Q. Do you perform discharge services for vehicles other than Volkswagens?

A. Yes, sir.

Q. And who would that be for?

A. The make of the automobile, or the company?

Q. The company.

A. American President Lines, d'Amico Mediterranean Line, Hanseatic Vaasa Line, either in whole or in part—I don't know what the contractual arrangement between the two partners are on the line—and Canadian Transport Company.

We have handled automobiles from Europe on specialty ships by Crown-Zellerbach Corporation, Blue Star Line, [fol. 209] and there are probably several others that I can't recall right now; and we also load automobiles.

Q. Do you load or discharge vehicles for the Government?

A. Yes, sir, we do. Marine Terminals Corporation of Los Angeles performs the stevedoring services for the U. S. Army Transportation Corps, Long Beach.

Q. Are those services that you refer to similar in nature to the ones you have described with respect to Volkswagens;

that is, a movement from point of rest to aboard the vessel, including into the vessel, or vice versa, from the vessel, to a point of rest?

A. That is the procedure here in California of a stevedoring operation, point of rest to storage, or vice versa.

Q. In handling vehicles for others, do you uniformly negotiate a rate on a unit basis, or do you have other bases for arriving at your compensation?

A. Well, there are three different ways in which automobiles can and are—

Q. I was asking about—

A. Volkswagens?

Q. No, about your company's negotiations for handling vehicles.

Mr. Ransom: He was about to answer you.

[fol. 210] . The Witness: There are three different methods.

By Mr. Madden:

Q. That you use?

A. That we use, yes.

Q. Would you explain.

A. Oh, number one would be a unit basis similar to what we have with Volkswagen. Another arrangement is on what they call a fixed fee, and another item is on a cost-plus. In the fixed fee, it can be based either on a measurement or a weight or a unit.

Q. Would you explain a little more the fixed fee method? Is that a fixed fee for the total cost of discharging a particular number of vehicles from a particular vessel?

A. A fixed fee in a stevedoring sense, a contract or an agreement means that the stevedoring company would cover his total longshore payroll, plus his insurance and taxes, whatever they may be.

Then he receives fee either on a tonnage basis or a unit basis for the cargo he has handled.

On a commodity basis, the rate includes the longshore payroll, and the taxes and insurance, and your overhead, and to arrive at a rate you just divide the amount of tonnage that you are going to do in a gang hour, and you come out with a rate. That is the formula for a commodity [fol. 211] rate.

Before arriving at any rates at all, you will have to get your gang costs, plus your overhead, and then you arrive at your rate by dividing the number of units or tons or pieces into the total cost.

Q. The fixed fee basis is somewhat similar to a cost plus basis, then?

A. It all starts at a cost plus.

Q. All three?

A. You have to arrive at a cost plus before you arrive at any.

Q. And the basic cost from which you start is the cost of the labor?

A. The gang, yes.

Q. That is, the gang that you have to use?

A. Yes, sir.

Q. Both aboard the ship and on the terminal?

A. That is right.

[fol. 212] Q. Now, turning to the method of arriving at the charge per unit which is made for a vehicle, I believe you testified that the fundamental cost item was the gang hour necessary to discharge a particular vehicle. Is that right, or the particular number of vehicles?

A. Yes. In an hour, based on an hourly basis, you arrive at an hourly gang cost and, as I said, you divide your anticipated production into that cost, and I might say that that cost reflects more than just the cost of paying the men. It is taxes and insurance. It is overhead, and it is assessments.

[fol. 241] Q. Do you know whether there are any stevedores on the Pacific Coast who are non-members of PMA, who would be capable of discharging Volkswagen vehicles?

A. I certainly do.

Q. Is there any stevedores in existence?

A. I certainly do.

Q. Are there any?

A. There certainly is.

Q. And who would they be?

A. Well, there are people available that could do this work outside of the PMA, and I don't think my naming names will mean anything to the record, but there have been indications that we could lose our customer to an outsider.

• • • • •

[fol. 266]      Redirect.

By Mr. Madden:

Q. For example, in connection with your discharge of paper, you mentioned some mechanized equipment. Is that equipment equipment that is owned by your firm?

[fol. 267] A. Yes. When I said mechanized equipment, it was equipment we have always used, but in many cases we could not use this equipment in certain ships in the hatch. The mechanization fund has given us the right now to take this equipment and move it in the hatch, and instead of man-handling it we use a machine.

Q. I see.

A. There is nothing new about the machine. It is just that we can put it in a different location.

Q. Do you have machinery on the wharf, also?

A. Oh, yes.

• • • • •

[fol. 277] PETER CURTIS for Complainant, Direct (continued).

Q. Mr. Curtis, you were here this morning when Mr. Horsman explained the contractual arrangements between Volkswagen and his companies for the performance of dis-[fol. 278] charge services in San Francisco and Los Angeles, and rather than repeat that testimony, is there any facet of your contractual arrangement that you believe Mr. Horsman stated incorrectly or omitted?

A. I would say Mr. Horsman was his usual reliable self. I can't think of anything terribly significant that I would take strong exception to.

\* \* \* \* \*

[fol. 302] Cross (continued).

By Mr. Ransom:

Q. Well—

A. They are paid for separately, over and above the commodity rate.

Q. Well, the commodity rates differ in Washington and Oregon from California?

A. It differs, yes, and it differs between San Francisco and Long Beach.

\* \* \* \* \*

[fol. 303] Q. If there had been a six-month strike, even in June of '59 or in 1960, would you consider that that would have been a disadvantage to Volkswagen?

A. Any interruption, when you have ships under charter, is a disadvantage to somebody.

Q. To Volkswagen?

A. Presumably. Of course it would.

Q. And since 1961, if there were strikes or work stoppages, that disadvantaged Volkswagen, didn't it?

A. As it does anybody else who has cargo.



Q. And work slowdowns and work stoppages in long-shore labor would have the same effect, wouldn't it?

A. Oh, yes.

[fol. 326] FREDERICK F. NOONAN for Complainant, Cross (continued).

Cross (continued).

By Mr. Ransom:

Q. You said that your tariff shows the measurement, and then a unit price for each automobile. Is the unit price then not based on a measurement scale, as related to the various automobiles?

A. The price is a unit price. Naturally it varies with the size of the car, large, larger cars taking more space in the ship command a higher freight rate, but the freight rate [fol. 327] is always quoted as a unit.

Q. Yes.

A. So that—

Q. But the variation between cars is in turn dependent for at least one of the factors on the measurement of the car?

A. That is correct.

Q. And not on the weight?

A. That is correct.

## BEFORE FEDERAL MARITIME COMMISSION

## EXHIBIT No. 4

## PACIFIC COAST LONGSHORE AGREEMENT

June 16, 1961 - July 1, 1966

INTERNATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION*And*

PACIFIC MARITIME ASSOCIATION

## SECTION 7

## VACATIONS

## 7.1 Computation of vacations.

In any payroll year each longshoreman who is registered and qualified on December 31 of the calendar year in which he earns his vacation shall receive a vacation with pay the following year at the straight time rate prevailing on January 1 of the calendar year in which vacations are paid, as follows:

## 7.11 Basic vacation.

7.111 One week's vacation with pay, provided he has been paid for at least 800 hours but less than 1,344 hours in the previous payroll year;

7.112 Two weeks' vacation with pay, provided he shall have been paid for 1,344 hours or more in the previous payroll year;

## 7.12 Additional vacation.

7.121 One additional week's vacation with pay if he shall have qualified under 7.112 and shall have been avail-

able for employment for ten (10) years or more under the ILWU-PMA Pacific Coast Longshore Agreement or its predecessors for employers bound by such Agreement and if

7.1211 In the four major ports of Seattle, Portland, San Francisco and Los Angeles, he shall have been paid for at least 800 hours in each of ten (10) of the previous fifteen (15) payroll years.

7.1212 In all other ports he shall have qualified for a vacation as set forth herein in five (5) of the previous ten (10) payroll years.

7.122 One additional week's vacation with pay if he shall have qualified for one week under 7.111, two weeks under 7.112 or three weeks under 7.121, and if in each of any twenty (20) of his past years of service he has worked at least 800 hours under the ILWU-PMA Pacific Coast Longshore Agreement or its predecessors for employers bound thereby.

7.13 Modifications applicable to basic vacation and additional vacation:

7.131 With respect to any port except Seattle, Portland, San Francisco and Los Angeles: if 75 percent of the registered men in the port were not paid for 1,344 hours in such payroll year, then for such port for such year the 800-hour requirement of 7.111 shall be reduced to 700 and the 1,344-hour requirement of 7.112 shall be reduced to 1,200.

7.132 If 75 percent or more of the men registered on December 31 in any port were paid for 1,344 hours or more in the then ending payroll year, men who were paid for less than 1,344 hours shall not receive additional vacation under 7.121; and

7.133 If 75 percent of the men registered on December 31 in any port were not paid for 1,344 hours in

any payroll year after 1957, the 800-hour requirement of 7.122 shall be reduced to 700 for that year.

7.134 If 75 percent of the men registered on December 31 in any port were not paid for 1,344 hours in any payroll year, those longshoremen registered in such port who were paid for 700 hours or more in such payroll year shall be deemed to have satisfied the 800-hour test of 7.1211 for that year.

7.135 In calculating the percentage of men who are paid for 1,344 hours, all men who are paid for less than 100 hours shall be excluded. The "75 percent formula" shall be applied on a port by port basis, "port" to be defined as that port in which the longshoreman is registered, regardless of where he works. However, all hours outside of the home port shall be added to the total of his paid hours in his home port.

7.136 Qualifying hours for registered men 60 years of age or older shall be reduced to 700 hours and 1,200 hours respectively.

7.1361 In any port where qualifying hours are 700 and 1,200 as provided in 7.131, qualifying hours for men 60 years of age or older shall be reduced to 600 and 1,100.

7.14 Each week's vacation pay shall be 40 times the basic or skilled straight time rate. A skilled rate applies when at least half of the qualifying hours are at a skilled rate.

## 7.2 Qualifying hours and years.

7.21 Qualifying hours for vacation purposes shall include all hours for which pay is received except previous vacation time.

7.22 Qualifying hours shall be limited to hours paid for by individual employers or parties to this Agreement and to other hours as to which employers participating in the vacation plan in the port area make the required pay-

ments to the Association. Hours paid to any longshoreman in any port area covered by the Agreement, other than that in which he is registered on December 31, shall be added to paid hours in his home port, provided, however, that such longshoreman either shall have been granted authorization in the customary manner to visit other port areas or shall have been transferred on the registered list in accordance with the rules and with the consent of the Joint Port Labor Relations Committees. A longshoreman who has received pay for work under this Agreement in more than one port area during the preceding payroll year must file a claim in the port where he is registered by February 1 of the calendar year in which vacations are paid, setting forth the details of his employment during the preceding payroll year.

7.23 Registered longshoremen shall be credited with hours paid for as longshoremen, clerks, or other employment under collective bargaining contracts to which the Union and the Association are parties, but no worker shall receive two vacations in the same year, one under this Agreement and another under any other agreement.

7.24 Registered longshoremen shall be credited with hours at court as jurors, including waiting time under court order, as certified by the clerk of the court.

7.25 In the major ports (Los Angeles-Long Beach Harbor area, San Francisco Bay, Portland Harbor, Seattle and any other port which cannot be classified as a minor port) if a man suffers an industrial injury on the job he shall be given credit, up to 100 hours maximum, of 40 hours per week when off a full week and eight (8) hours per day when off part of a week. He shall be given a similar credit for proven non-industrial illness or injury. In order to qualify for such credit the man must have averaged 27 hours per week for the four-week period prior to the injury or illness and 13 hours per week averaged over an eight-week period after he returns to work. In the



minor ports (defined as any port other than the four mentioned above—in which more than 25 percent of the registered men were paid for less than 800 hours during the preceding payroll year) a man must have been paid for an average of 14 hours per week for the four-week period preceding the injury or illness and 8 hours per week averaged over an eight-week period after he returns to work.

**7.26 In computing years of service under 7.12:**

**7.261** Continuous absence from employment because of industrial illness or injury arising out of employment under this Agreement compensated for under a State or Federal Compensation Act shall be considered qualifying time.

**7.262** Service in the Armed Forces of the United States or employment by the United States as a civilian in longshore operations in World War II and the Korean War, that occurs after registration, shall be considered qualifying time.

**7.263** Service as a full-time Union official or of a registered longshoreman employed as a joint employee of a labor relations committee, welfare fund, pension fund, or other joint entity of the parties shall be considered qualifying time.

**7.264** When any longshoreman is absent less than the full calendar year, he shall receive only proportionate credit for qualifying time.

**7.27** Any employee who has been registered in both a small port and a large port during the period in which he claims to have satisfied the requirements of 7.121 for a third week of vacation must satisfy the requirements of 7.1211, but for such purposes he shall be given double credit for any year in which he worked at least 800 hours in a small port, and for each such year of double credit the 15-year spread shall be reduced by one year.

7.28 Where a longshoreman has been paid for work in part of the year both by the Union or its longshore locals and by the Employers and the total amount thereof qualifies him for a vacation, his vacation shall be paid by the Employers and the Union on a pro rata basis.

### 7.3 Vacation procedure.

7.31 The method and procedure for scheduling vacations shall be those which have been in effect since 1951. Vacation periods may be scheduled during any month(s) of the calendar year by the Joint Labor Relations Committee of each port who will also schedule vacations on a full week by week basis when so requested by the man.

7.32 Each registered longshoreman entitled to a vacation shall take his vacation at the time scheduled.

7.33 A registered longshoreman whose registration is cancelled after he shall have fulfilled all requirements for a vacation during the previous payroll year shall receive vacation pay at the time agreed to by the parties.

7.34 If a registered longshoreman dies after he has worked the required hours for a vacation, his vacation pay will be paid to his widow or beneficiary.

7.35 If a registered longshoreman retires under the ILWU-PMA Pension Plan or leaves his job under the ILWU-PMA Mechanization and Modernization Plan after, in either case, he has worked the required hours for a vacation, he shall receive his vacation pay at the time agreed to by the parties.

### 7.4 Administration.

7.41 Each employer agrees to pay a proportionate share of the vacation pay of each longshoreman working in any particular port, the amount of and the eligibility for such vacation to be fixed in accordance with 7.1, and the individual share of each employer to be determined as follows:

7.411 The individual employer will be liable for a share of the vacation pay payable to every longshoreman working in each port in which the member has employed any longshore labor.

7.412 Each individual employer's liability for each eligible longshoreman's vacation pay shall be the proportion of the individual's pay that is equal to the proportion that the total number of longshore hours of work performed for that member in that port bears to the total number of longshore hours of work performed by all employers in that port participating in this vacation plan. It is the purpose of this 7.41 to provide for a several liability for each employer and to provide for a liability from every employer participating in the vacation plan in a port to every longshoreman in the port who is eligible for vacation pay under 7.1 hereof.

7.42 The Pacific Maritime Association shall be the disbursing agent under this Agreement and shall make vacation checks available in the same manner as regular pay checks are made available in each port area. Vacation checks will be available for distribution in the first week of May of the calendar year in which the vacations are paid.

7.43 Any public port or port commission may become a party to this vacation agreement by notifying the Union and the Association, prior to the first day of the calendar year in which the vacation is to be taken. Similarly, any or all of the Armed Services may become parties. In the event that one or more public ports or Armed Services becomes a party to the agreement, said port(s) or Service(s) shall be placed in the same status as an individual employer member of the Pacific Maritime Association for all the purposes of this Agreement.

7.44 Nonmember employers may participate in the vacation plan in accordance with the conditions thereon fixed by the Association.

• • • • •

## BEFORE FEDERAL MARITIME COMMISSION

## EXHIBIT No. 50

(Letterhead of Seattle Stevedore Co.,  
Seattle 4, Washington)

November 30, 1961

Mr. Peter Curtis  
Winchester Agencies, Inc.  
351 California St.  
San Francisco 4, Calif.

TERMINAL & STEVEDORING SERVICES  
VOLKSWAGEN CHARTER VESSELS

Dear Sir:

We wish to acknowledge your letter of November 15, 1961 regarding the above subject, as well as our recent discussions in San Francisco on November 24th relating to this subject and the Modernization Fund assessments.

In accordance with the terms of your letter, we are agreeable to perform services for these vessels as specified in "Stevedore Orders" or "Work Orders" issued by Messrs. Volkswagenwerk. This contract will be on the same basis as in the past, however, will be with Winchester Agencies, Inc., and we will bill accordingly through your local Agents, International Shipping Co., Inc., Seattle.

Regarding the Modernization assessment, we have previously notified your company that we could not handle the discharge of these autos under the existing contract rates without being guaranteed payment of this assessment, inasmuch as, you certainly know, there is nothing in our present rates to make such an absorption. This, on our rates in the Puget Sound area, could be 40% or more of the rate.

We are certainly in sympathy in your efforts to secure an adjustment of this rate which, we feel, is discriminatory and we will do all possible with the Pacific Maritime

Association to secure such an adjustment. You, however, are fully aware of the thinking of these people and sometimes it seems their decisions do not necessarily reflect the merits of a case. We will continue to bill the present assessment with the understanding that you are presently not paying these charges until an adjustment is made or the legality and equity is tested.

Very truly yours,

SEATTLE STEVEDORE Co.

/s/ M. M. STEWART  
M. M. Stewart  
Vice President

MMS:ek

cc: International Shipping Co., Inc., Seattle.

#### EXHIBIT No. 57

#### BEFORE FEDERAL MARITIME COMMISSION

(Letterhead of Pacific Maritime Association,  
San Francisco 11, Cal.)

#### MEMBERS:

#### MODERNIZATION AND IMPROVEMENT FUND TONNAGE ASSESSMENTS

Members were notified by our letter dated December 14, 1961 of a rate reduction in the present M & I Fund Tonnage Assessment and the establishment of a new tonnage assessment for a Walking Bosses and Foremen's Mechanization Fund.

The change in rates of the present M & I Fund tonnage assessment from 27½¢ to 24½¢ on general cargo, lumber, logs, and automobiles, and from 5½¢ to 5¢ on dry bulk cargo is effective on all loading and discharging operations commencing in any Pacific Coast port on and after 8:00 A.M., December 18, 1961. At the identical time, a 4¢ per ton assessment becomes effective on general cargo, lumber, logs and automobiles for a Walking Bosses and Foremen's Mechanization Fund.



Since the changes are effective in mid-month, it will be necessary to segregate tonnage assessable at the old rates from that assessable at the new on the Monthly Report of Tonnage (Form CDT-1) for December 1961. Reports of Assessable Tonnage for the Mechanization Funds can then be prepared in the following manner:

*Shipping Company Members:*

- (a) prepare the usual forms MI-102 for the tonnage assessable at the old rates.
- (b) prepare separate forms MI-102 for tonnage assessable at the new rates. It will be necessary to segregate the Walking Bosses and Foremen's assessment from the regular assessment. This can be accomplished in the following manner on Form MI-102:

|                             | <i>Tons</i>  | <i>Rate</i> | <i>Amount</i> |
|-----------------------------|--------------|-------------|---------------|
| GENERAL CARGO, ETC.         | 1,000        | .245        | \$245.00      |
| BULK DRY CARGO              | 1,000        | .05         | \$ 50.00      |
|                             |              | TOTAL       | \$295.00      |
| Walking Bosses &<br>Foremen | 1,000 tons @ | .04         | \$ 40.00      |
|                             |              |             | \$335.00      |

*Stevedore Contractor Members:*

Stevedore Contractors reporting assessment on non-member tonnage should follow exactly the instructions set out under (a) and (b) above except they should use form MI-100 instead of form MI-102.

It will be necessary on all future reports to list the Walking Bosses and Foremen's assessment separately as outlined above.

K. F. SAYSETTE,  
Vice President & Treasurer

[fol. 751]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
No. 19,840

---

VOLKSWAGENWERK AKTIENGESELLSCHAFT, Petitioner,

v.

FEDERAL MARITIME COMMISSION

and

UNITED STATES OF AMERICA, Respondents,

PACIFIC MARITIME ASSOCIATION,  
MARINE TERMINALS CORPORATION, Intervenors.

---

On Petition to Review and Set Aside Order of the  
Federal Maritime Commission

---

OPINION—Decided December 22, 1966

*Mr. Walter Herzfeld*, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Messrs. Richard A. Whiting* and *Robert J. Corber* were on the brief, for petitioner.

*Mr. Walter H. Mayo, III*, Attorney, Federal Maritime Commission, with whom *Assistant Attorney General Turner*, *Messrs. James L. Pimper*, General Counsel, [fol. 752] *Robert N. Katz*, Solicitor, Federal Maritime Commission, and *Irwin A. Seibel*, Attorney, Department of Justice, were on the brief, for respondents.

*Mr. Gary J. Torre*, of the bar of the Supreme Court of California, *pro hac vice*, by special leave of court, with whom *Mr. Edward D. Ransom* was on the brief, for intervenor, Pacific Maritime Association.

*Mr. Arthur R. Albrecht* entered an appearance for intervenor, Marine Terminals Corporation.

Before McGowan, Tamm and Leventhal, Circuit Judges.

Per Curiam: This case is before this court on a petition to review and set aside an order of the Federal Maritime Commission. Petitioner is a German corporation which manufactures Volkswagen automobiles. It ships large quantities of automobiles to ports on the Pacific Coast by means of common carrier and chartered vessels. Marine Terminals Corporation [hereinafter MTC], respondent below, intervenor here, operates ocean terminals at San Francisco and Long Beach, California, where it provides stevedoring services for both common carriers and charter vessels. Pacific Maritime Association [hereinafter PMA], intervenor below and before this court, is a nonprofit corporation made up of common and contract carriers, marine terminal operators, and stevedore contractors. PMA was organized in 1949 for the purpose of negotiating and administering labor contracts with labor unions on behalf of its members. MTC is a member of PMA; Volkswagen is not, since shippers are not eligible for membership in the organization.

## I.

In order to understand the present controversy between the parties, it is necessary to review briefly the origins [fol. 753] of their dispute. As noted, PMA serves as the collective bargaining representative for its members. In 1957 the members desired to introduce work-saving devices into the industry and to be free of strikes and slowdowns during the period of transformation to greater mechanization. In its capacity as the representative of longshoremen and marine clerks, the International Longshoremen's and Warehousemen's Union [hereinafter ILWU] desired assurances from PMA that its members would share in the monetary benefits realized from the introduction of work-saving devices.

As a result of extensive negotiations between PMA and ILWU, a "Mechanization and Modernization Fund" of \$29,000,000 was agreed upon. This fund was to be collected over a nearly six-year period from PMA members and to be used to cushion the effects of higher production upon longshoremen and marine clerks displaced by the mechanization. Since PMA's membership was responsible for payment of the fund, the ILWU agreed to allow PMA to be sole determinator as to how the fund should be accumulated. The necessity for the fund itself is not here in controversy; in fact, all parties agree that it serves a salutary purpose. What is in controversy is the funding method approved by PMA to raise the money from its members.

In order to determine how its members should be assessed in accumulating the fund, a Work Improvement Fund Committee was appointed by PMA. The majority of the Committee recommended that members should be assessed on the basis of tonnage carried or handled, with bulk cargo being assessed one-fifth the rate of general cargo.<sup>1</sup> The rate for general cargo was set at 27½¢ per [fol. 754] ton carried or handled; the special category of bulk cargo was to be assessed at 5½¢ per ton carried or handled. Each member of PMA was to remit to PMA, as trustee for the fund, an amount equal to the per tonnage assessment, a ton constituting for the purposes of the assessment 2000 pounds weight, or 40 cubic feet measurement.

The Committee recommended that the assessment be based on the cargo "as manifested" for loading or discharging at Pacific Coast ports. Usually any particular type of cargo is manifested, consistently, either on a weight or measurement basis. Thus the amount of the assessment for any particular commodity would be directly re-

<sup>1</sup> In adopting the majority report, a minority report recommending that a combined man-hours—tonnage method of assessment should be used was rejected.

lated to whether that commodity was manifested by weight or measurement tons.

There is no uniform way of manifesting automobiles. In the foreign trades they are manifested on a unit basis on chartered ships, but weight and sometimes measurement is shown (the unit price including costs, overhead and profit to the terminal operator, as well as an assessment for PMA dues.) On common carriers both weight and measurement are shown. Tariffs are on a unit basis but dependent upon measurement. In the coastwise trades, autos are manifested and freighted by weight.

Despite the fact that automobiles were manifested in these different ways, PMA determined that automobiles should always be assessed for the mechanization fund on a measurement ton basis regardless of how they were manifested. This treatment of automobiles was in contradistinction to all other cargo which was assessed according to the manner in which it was manifested.

## II.

Cast against this background, Volkswagen's grievance comes into sharper focus. If considered on a measurement ton basis, a Volkswagen automobile measures 8.7 tons, whereas if a weight ton basis is utilized, it measures [fol. 755] only 0.9 tons. An assessment for the fund based on measurement tons at  $27\frac{1}{2}\text{¢}$  per ton equals \$2.35 per automobile; the same assessment based on weight tons equals \$.25. Thus the utilization of the measurement ton as the standard results in an assessment more than ten times greater than if the weight ton were to be used.

Volkswagen promptly protested to PMA the "discriminatory burden" imposed upon automobiles in general and Volkswagens in particular. Since this make of automobile constitutes by far the largest number of automobiles imported through Pacific Coast ports, the "ten times heavier tax," it argued, was in fact an excessive tax on Volkswagens. In addition, Volkswagen protested favorable treatment accorded by PMA to scrap metal and lumber



cargo which were relieved of paying a major part of the assessment by virtue of "depressed" conditions in these industries. Petitioner also argued that the "tax" was particularly inequitable as applied to its operations since, because of previous modernization made in the handling of automobiles, no substantial savings could be expected in the handling of Volkswagens as a result of the institution of the mechanization fund. Petitioner's arguments to PMA were to no avail; Volkswagen has, however, refused to pay the assessment as calculated on a measurement ton basis.

Volkswagen's refusal to pay the assessments on its automobiles prevented the terminal operators (and particularly MTC) from paying to the PMA fund the assessments due on this cargo. It was both theoretically and practically impossible for the terminal and stevedoring companies to absorb the 27½¢ per ton assessment on automobile cargo (\$2.35 per auto) since their profit per automobile does not exceed \$1.00. MTC sought advice from PMA as to what "stand we can take in demanding payment of the assessment." MTC requested PMA's Board of Directors for authority "to bring suit against Volkswagen [fol. 756] wagen for the monies due." Rather than have MTC sue Volkswagen directly, however, it was determined by PMA that it would sue MTC and the other onshore operators engaged in discharging Volkswagen automobiles and they would in turn implead Volkswagen. PMA did bring suit against MTC in the United States District Court for the Northern District of California; when Volkswagen was impleaded by MTC, the District Court stayed the proceedings in that court at the request of Volkswagen to enable it to institute proceedings before the Federal Maritime Commission under the Shipping Act of 1916, amended, 46 U.S.C. § 801 *et seq.* (1961). The district court granted the stay and petitioner began these proceedings.

The following issues were submitted to the Commission for its determination:

"1. Whether the assessments claimed from [Volkswagen] are being claimed pursuant to an agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15<sup>2</sup> of the Shipping Act, 1916, as [fol. 757] amended, 46 U.S.C. 814 (1961), before it is

---

<sup>2</sup> Section 15, 46 U.S.C., section 814.

Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person, subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this chapter, and shall approve all other agreements, modifications or cancellations.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

lawful to take any action thereunder, which agreement has not been so filed and approved.

2. Whether the assessments claimed from [Volkswagen] result in subjecting the automobile cargoes of [Volkswagen] to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U.S.C. 815.<sup>3</sup>

[fol. 758] 3. Whether the assessments claimed from [Volkswagen] constitutes an unjust and unreasonable practice in violation of Section 17 . . . ”<sup>4</sup>

Subsequently hearings were held, and the Examiner issued his initial decision finding, *inter alia*, that MTC and PMA were persons subject to the Shipping Act and that the agreement entered into between MTC and other PMA members was a “cooperative working arrangement.” The examiner went on to find, however, that the cooperative working arrangement between MTC and the other members of PMA was not such an arrangement required by Section 15 of the Shipping Act to be filed with and ap-

<sup>3</sup> Section 16, 46 U.S.C., section 815.

It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

<sup>4</sup> Section 17, 46 U.S.C., section 816.

Every such carrier and every other person subject to this chapter shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

proved by the Federal Maritime Commission. The Examiner also found no violation of Section 16 or 17 of the Shipping Act.

Before the Commission, both MTC and PMA contested its jurisdiction, MTC arguing that they were not "other persons" under Section 1 of the Act<sup>5</sup> and PMA arguing [fol. 759] that the exclusive jurisdiction given the National Labor Relations Board over collective bargaining precluded the Commission from having jurisdiction in the instant case. The Commission did not resolve the jurisdictional question, but rather assumed for the purposes of its decision that both MTC and PMA were subject to the Act. Even though it found the literal language of Section 15 broad enough to encompass any "cooperative working arrangement" entered into by persons subject to the Act, the majority of the Commission held Section 15 inapplicable to PMA's agreements regarding the mechanization fund because it interprets that section to apply

"only to those agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or traveling public or their representatives."

The agreement among the members of PMA, the Commission found, was not, standing alone, such an agreement that would affect competition by parties in vying to serve outsiders who are not parties to the agreement. In order to find a Section 15 agreement, the Commission held that there must be demonstrated that there was "an additional agreement among the PMA membership to pass on all or a part of its assessments to the carriers and shippers served by the terminal operators." The Com-

<sup>5</sup> The term "other person subject to this chapter" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. 46 U.S.C. § 801.



mission determined, however, that the "record is devoid of evidence showing the existence of such an additional agreement."

The two dissenting Commissioners did not agree with the majority members on this point, arguing that Section 15 requires that the agreement in question should have been filed with the Commission.

The Commission further found that no violation of Section 16 existed because petitioner had failed to show that cargo competitive with its automobiles (id est, other [fol. 760] automobiles) had been preferred. As for Section 17, the Commission, although noting that MTC conceded that "the method of assessment against automobiles on a tonnage basis is unfair," found no "unreasonable practice" because "there is no statutory requirement that all users of a facility be assessed equally."

### III.

Petitioner argues ably and earnestly before this court that the Commission has erred in approving the agreements involved in this case. It charges that PMA is dominated by liner interests and that the discriminatory "tax" on Volkswagen automobiles has been meted out to transfer to Volkswagen the financial burden which liner cargo should be carrying. It argues that the PMA committees set up to implement the funding of the mechanization fund are controlled by the shipping lines who are members of PMA and that the decision regarding how heavily automobiles should contribute to the fund always lay with these shipping lines.<sup>6</sup> Since over seventy per cent of Volkswagen's

<sup>6</sup> It is interesting to note in this regard that under PMA's by-laws, its carrier membership have a majority on its Board of Directors and the controlling vote at membership meetings. In addition, carriers furnish all the members of both the PMA committee appointed to consider how the cost of the mechanization fund should be allocated and the committee subsequently formed to pass upon any inequities resulting from that method. Neither committee included any independent terminal operators or steve-



automobiles arrive by chartered vessel (non-PMA members) and many of the remainder are carried by liners not members of PMA, the higher automobile tax falls heaviest [fol. 761] on Volkswagen and serves to lessen the amount of assessment on other general cargo carried by the shipping lines who are PMA members. Volkswagen charges that PMA is attempting to utilize automobile cargo, which the liner interests do not in the main carry, to subsidize other forms of cargo carried by the liner interests. Volkswagen further charges that on all cargo loaded or discharged on behalf of PMA's carrier members, the carrier member must bear the cost of the mechanization fund payments; however, on cargo arriving by chartered vessel (such as seventy per cent of Volkswagen), the burden of the tax falls upon the non-PMA member shipper (Volkswagen). Thus it is to the financial advantage of PMA liner members to place a disproportionately heavy assessment on automobiles.

With respect to the question of whether there was an agreement in this case under Section 15, petitioner argues that the collective action engaged in by the members of PMA as embodied in its agreements is exactly the type conduct which Congress intended to regulate when it passed the Shipping Act. It states that Section 15 requires the filing and approval of *every* agreement, by which is meant as well as an "understanding," falling into one of seven categories enumerated in the Act. (See note 2, *supra*.) Included in these categories is any agreement

"fixing or regulating transportation rates or fares; . . . controlling, regulating, preventing or destroying competition; . . . or in any manner providing for an exclusive, preferential or cooperative working arrangement."

Petitioner argues that, giving the statutory language its plain meaning and a reasonable interpretation, the PMA

---

doring contractors. The hearing examiner found "that there is no substantial evidence in the record to support Volkswagen's contention that liner interests dominate PMA."

agreements clearly serve to bring about all of these proscribed consequences.

Petitioner also attacks the Commission's holding that a Section 15 agreement must be between parties in competition with one another and its further holding that the [fol. 762] agreement must relate to a specific aspect of the competition between them, that is, competition with reference to the "shipping or travelling public, or other representatives." Such a reading of the Act is far too narrow, it argues, and all but emasculates the Act as an effective means of regulating congressionally proscribed conduct in the industry. Moreover, the Commission's interpretation serves to remove from the Act's jurisdiction agreements involving persons between whom no competition has ever existed as, for example, an ocean carrier and a freight forwarder, both of whom are subject to the Act.

Finally, petitioner argues with respect to Section 15 that, even if the Commission's construction of the statute were on sound ground, it would still have erred in concluding that such construction left the cooperative working arrangement outside Section 15. As the Commission made plain, it would have found such arrangement within the statute if there were

"an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators."

Petitioner attacks the Commission's characterization of the record as being "devoid of evidence" showing the existence of such an additional agreement. It points to the fact that, as a logical and practical matter, it necessarily had to be within the contemplation of the PMA terminal operator members and stevedoring companies that the assessment would be passed on to shippers because when MTC and the other PMA members voted the assessments they knew that they could not pay them without increasing their charges to petitioner. The assessments, it is argued, "were agreed to with this as a silent predicate. There was

no need to secure explicit agreement regarding action to which there was no alternative." Petitioner further argues [fol. 763] that all involved knew that the passing on of the PMA assessment to Volkswagen was an integral part of PMA's program. Thus, when Volkswagen refused to reimburse MTC, PMA made no serious attempt to collect the assessments from MTC nor did it dispute MTC's description of itself as "only a collection agency" in the matter. Petitioner points further to the fact that MTC has never made any payments to PMA on cargo on which Volkswagen has refused to recognize any obligation to pay, although MTC has made all other payments called for by the cooperative working arrangement. This conduct, petitioner argues, demonstrates an "understanding" within the contemplation of Section 15 to pass on the assessments to petitioner.

Petitioner also attacks the Commission's determination that there was no Section 16 violation involved in this case because petitioner had failed to show that cargo in competition with its automobiles had been preferred. Petitioner argues that, although past precedents of the courts and Commission support a "competition" requirement, more recent cases have done away with such a requirement. It argues that the focus of the Commission should be on the fact that the assessment of automobiles based upon measurement tons coupled with favored treatment given other cargo serves to provide other cargo with a "preference and advantage" not granted petitioner, which is undue prejudice in clear violation of the Act.

With respect to Section 17, petitioner argues that the Commission erred in not finding an unreasonable and/or unjust practice by MTC in the execution of the PMA agreement. It faults the Commission for failing to look at the method for allocating the cost of the fund, and for failing to consider under Section 17 the making of the monthly payments to PMA by the terminal and stevedoring companies. It argues that the cooperative working arrangement among the membership of PMA is, in fact,

illegal under the antitrust laws as a price fixing arrangement [fol. 764] and therefore necessarily unreasonable under Section 17 and that the arrangement is inequitable because it distributes a common cost in an unfair and unreasonable fashion. Finally, it attacks the Commission's determination that there need only be "substantial benefits" accruing to one against whom a charge is levied, and its decision that it is not necessary that benefits and burdens be directly related.

#### IV

Before deciding the questions proposed here, reference must be had to the principles which are to guide us in reviewing decisions of an administrative agency such as the Federal Maritime Commission. Our touchstone here has to be the Supreme Court's recent decision in *Consolo v. FMC*, 383 U.S. 607 (1966), where the Court, in the course of reversing a decision of this court, spoke at length concerning the meaning of the substantial evidence rule which appellate courts are to apply to decisions of the Federal Maritime Commission. In *Consolo*, the Court stated:

"Section 10(e) of the Administrative Procedure Act . . . gives a reviewing court authority to 'set aside agency action, findings and conclusions found to be (1) arbitrary, capricious, [or] an abuse of discretion . . . [or] (5) unsupported by substantial evidence. . . . Cf. *United States v. Interstate Commerce Comm'n*, 91 U.S.App.D.C. 178, 183-84, 198 F.2d 958, 963-64, cert. denied, 344 U.S. 893. We have defined 'substantial evidence' as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co. v. Labor Board*, 305 U.S. 197, 229. '[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' *Labor Board v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300. This



is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative [fol. 765] agency's finding from being supported by substantial evidence. *Labor Board v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106; *Keele Hair & Scalp Specialists, Inc. v. FTC*, 275 F.2d 18, 21.

Congress was very deliberative in adopting this standard of review. It frees the reviewing courts of the time consuming and difficult task of weighing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps to promote the uniform application of a statute."

Although numerous statements and re-statements of the substantial evidence rule as interpreted and applied by federal appellate courts might also be cited, we believe that what was recently said by this court in *Philadelphia Television Co. v. FCC.* — U.S.App.D.C. —, — F.2d — (No. 19,577, March 28, 1966) has particular relevance with respect to the task confronting this court in reviewing the decision of the Commission in the instant case. There we said that

"to sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceeding."

Deference must also be paid in this case to the Commission's expertise, especially in view of the technical and specialized nature of the subject area over which it has jurisdiction.

Applying these general principles to the specific issues before us in this case, and giving due deference to the expertise of the Commission, we conclude (albeit with some hesitation) that there is substantial evidence in the



record considered as a whole to support the Commission's decision. The Commission's conclusion that the funding agreement standing alone does not come within the provisions of Section 15 is a tenable one and not arbitrary or capricious, especially in view of the paucity of dispositive precedent on the question.

[fol. 766] The Commission's determination that the record is "devoid of evidence" showing the existence of an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators presents a closer question. Petitioner points to a number of factors which tend to demonstrate the existence of such an agreement.<sup>7</sup> In addition, petitioner points out that as a practical and logical matter MTC had no choice but to pass on the cost of the assessment to the shipper since it was compelled to do so by economic necessity. Since MTC and the other terminal operators and stevedore companies were members of PMA, and since the logical and necessary consequence of their agreement to make the assessment was that such assessments would have to be passed on to the shippers, it necessarily follows that there was at least a tacit agreement among the terminal operators and stevedore companies that the assessment would be passed on to the shippers. Petitioner, however, is not able to point to

---

<sup>7</sup> This evidence includes: a telegram from one of the PMA members handling Volkswagens expressing the opinion that the cost could never be assumed by the stevedore companies; a letter from MTC to PMA advising that "there is no way that the contractor could absorb such an increase"; a letter from MTC to PMA in which MTC described itself as "only a collection agency in this matter"; a letter expressing PMA's fears that if Volkswagen received a new rate the Army would demand the same for the transport of its automobiles; an inter-office PMA memo stating that the funding committee did not feel that the then present assessment worked a hardship on the *shipper*; minutes of a PMA meeting expressing the opinion that the money owed was due from Volkswagen and not MTC; the creation of an escrow agreement for payments of funds on behalf of Volkswagen (payment to be made by the stevedores).

any direct testimony establishing that such an agreement was made.

[fol. 767] In the face of the evidence relied upon by petitioner and the forceful logic of its argument, the Commission held that

“to hold that a section 15 agreement existed on this record would require us to disregard explicit statements to the contrary as well as actions on the part of both the common carrier members of PMA and respondents inconsistent with the existence of such an agreement.”

The question we must decide is whether the record considered as a whole contains substantial evidence to support the Commission's finding. It should be noted that what we are here concerned with presents essentially questions of fact—did the agreement take place, was there an “arrangement” between the parties, etc. Moreover, questions of credibility are involved since witnesses for PMA affirmatively denied the existence of any such agreement or arrangement, and the Examiner, who had an opportunity to observe the witnesses, found no agreement. In these circumstances, we believe that there is substantial evidence in the record considered as a whole to support the Commission's conclusion. Although we might be inclined to reach a conclusion different from that of the Commission were we considering the question *de novo*, or under a less restricted power of review than that enunciated in *Consolo, supra*, we are bound to give the Commission's decision the benefit of all reasonable inferences and our conclusion in so doing is that the Commission's determination that there was no additional agreement is supported by substantial evidence.

Turning next to Section 17,\* careful consideration has [fol. 768] been given by the court to petitioner's contention

---

\* Section 16 will be considered, *infra*, since our conclusions with respect to Section 17 have relevance in the resolution of petitioner's

that the laying of the mechanization fund assessment on automobiles on a measurement basis rather than the weight basis used on the Volkswagen cargo as manifested is "an unreasonable practice . . . relating to . . . the handling of property" in violation of Section 17 of the Act.<sup>9</sup> The prob-

claim that it is a victim of discrimination in violation of Section 16. We reject at the outset of our discussion of Section 17 respondent's argument that the issue of the unreasonableness of the charge itself can be entirely ignored because petitioner is charging MTC and not PMA with the violation. The complaint, fairly read, charges all members of PMA—including MTC—with an unreasonable practice in the method of computing the assessment.

<sup>9</sup> The Commission's opinion concerning this issue recognized the salient facts relied on by petitioner and disposed of the problem with reasoning discussed, *infra*. The Commission said:

It is true that the assessing of automobiles on a measurement basis results in an assessment ten times as great as would result from a weight basis, and that although other cargo is assessed as manifested, automobiles are always assessed on a measurement basis. It is further true that although the assessment on a measurement basis for some general cargo items exceeds the amount computed on a weight basis, in no instance is the difference as great as on automobiles, and that as there is little likelihood of mechanical improvement in the method of unloading automobiles, auto shippers will probably receive only general benefits from the fund plan, such as freedom from strikes or slowdown.

However, as complainant admits, there is no statutory requirement that all users of a facility be assessed equally. As long as "substantial benefits" are provided for one against whom a charge is levied, we will not normally declare the charge unlawful. *Evans Cooperage Co. Inc. v. Board of Commissioners*, 6 F.M.C. 415. The fact that the benefits may differ to some extent in both kind and degree is not material. An exception to the above principle might arise if it could be shown that the leviers of a charge imposed it in an unequal fashion because of a design deliberately to burden one of the users of its service more than another.

The assessment here, however, has been levied in its present form because it was necessary in the business judgment of respondents to do so. The reasonableness of respondents' activities is attested to by the additional facts that they have sought to change the method of "Mech" fund [11] assessment

[fol. 769] lems of the case under Section 17 are perhaps most clearly focused by adverting to the opinion of the dissenting member of the Commission, who concluded that PMA's entire system of measurement and allocation of this type of labor cost is unjust and unreasonable. In his view the core injustice ensued when PMA adopted the recommendation of a majority of its committee, which recommended a property basis of allocation of the assessment (in accordance with tonnage), whereas only through a labor measure of allocation such as that recommended by the minority (*id est*, man-hours with adjustments for inequities) can the burden of this labor cost become a just cost of business. The property measure, he concluded, opens the door to a singling out of particular traffics or persons for disadvantage, and this, in turn, is possible because PMA's control of the market precludes corrective control by competitive forces.

The majority of the Commission was aware that a minority of PMA's committee recommended that the assessment be based in substantial part on the relative man-hours of the various stevedoring companies involved. Indeed, as the Examiner noted, the first \$1,500,000.00 mechanization fund raised by PMA, during 1960, pending the report of the Committee, had been collected on a man-hour basis. However, PMA members complained that this method was unfair, and the majority of the Commission concurred in this conclusion.

[fol. 770] Our examination of the PMA Committee report and the reasoning supporting its conclusions leads us to conclude that the assessment was reasonable. It appears that the Committee began by considering the possibility of apportioning the assessment on the basis of who obtained a savings as a result of now-permitted mechanization. An

---

on automobiles, have offered to pass on only a part of the assessment, and have levied a part of their dues assessment against Volkswagen for several years upon the same measurement basis without protest.



expert of the Bureau of Labor Statistics was engaged to explore the possibility of measuring productivity improvement. The PMA turned away from this approach, partly because it feared that its adoption would help the Union enlarge its later demands and partly because the system was unfeasible due to complexity, including the difficulty of determining which savings were attributable to this or other factors. The Committee felt it to be essential to arrive at a system that would not be excessively burdensome to anyone, yet would be simple in its administration.

In rejecting continuance of the initial man-hours basis,<sup>10</sup> the majority of the Committee reported:

"They were struck by the inequity of a contribution formula based on man-hours which would provide for a decreasing percentage of the total contributions to the Fund by the operators which made greatest use of and received the greatest benefit from the new agreements, and were most contributing to the loss of work opportunity that gave impetus to the Union's demand for the fund and would be invoked in future bargaining as the ground for continuing the Fund."

The Committee was troubled by the inequity of most rewarding with low assessments those who had already mechanized most when it was their past reduction of work hours that had galvanized the Union into the activities that led to this industry-wide labor cost assessment.

The Committee recommended a formula based on cargo [fol. 771] tonnage as a "rough-and-ready" way to divide the cost, admittedly lacking the refinement of the productivity measurement method but also lacking its infeasibility and avoiding the inequity of the man-hour method whereby contributions are in *inverse* proportion to benefits received. It considered that cargo volume though not necessarily

<sup>10</sup> The majority considered that the reasons against continuance of a man-hour basis also militated against partial reliance on this factor, as recommended by the majority.



proportional was some indicator of stevedoring activities and that administrative simplicity was a cardinal consideration.

The Committee recognized further that there were also objectionable features of the tonnage formula but considered these to be less weighty than the objections inhering in the other formulae. It recommended that the formula be reviewed to prevent the continuation of any hardship or inequity that might develop.

It may be noted that the Union had proposed that a tonnage formula be incorporated in the collective bargaining agreement, but the PMA did not wish to limit its discretion in seeking and determining the most reasonable formula it could devise. Petitioner could presumably have had no complaint if PMA had acquiesced in the Union's demand. The PMA told the Union it wanted flexibility to allocate the labor cost on the basis of tonnage man-hours or both, and the Union agreed to let PMA decide the matter. (PMA also feared a tonnage charge levied under a Union agreement would have a tendency to persist into the next contract.)

In view of the foregoing, we cannot say that PMA was unreasonable in arranging for an allocation of this industry labor cost in accordance with volume tonnage already in industry use for a portion of PMA's dues. Tonnage dues, based on revenue tons of cargo, had been used for many years by PMA. PMA's function and budget relate primarily to the negotiation and administration of union labor contracts. There was therefore in effect an industry custom and practice for using revenue tonnage for the purpose of allocating sundry labor costs. The mechanization fund is an additional labor cost administered by PMA.

Petitioner complains of the inequitable "tax" laid upon it. This use of the word "tax" is forensic rather than analytical, but it calls to mind various decisions which if anything militate against its declaration of arbitrariness. "Administrative convenience and expense in the collection

or measurement of the tax" is a valid ground of classification in arranging the incidence of taxation. *Southern Coal & Coke Co. v. Carmichael*, 301 U.S. 495, 511 (1937). There is no requirement that for every payment there must be an equal benefit. *Houck v. Little River Drainage Dist.*, 239 U.S. 254, 264-65 (1915).

The Commission's doctrine follows the same line. Thus in *Evans Cooperage, Inc. v. Board of Commissioners of the Port of New Orleans*, 6 F.M.B. 415 (1961), a city's uniform wharfage charge was upheld, even though applied to cargo transferred from a barge to a vessel moored at a wharf without moving across the wharf, on the ground that "substantial benefits" were provided for the person being charged. The Commission noted that the barge and cargo enjoyed substantial benefits from the services and facilities, that "there can be no precise equivalence between services and charges" and that the service was "reasonably related to the charges."

The Commission upheld the assessments before us, noting the substantial benefits accruing to all cargo from the mechanization agreement. As the Commission noted, this is not to say that the mere existence of substantial benefits permits a tax laid solely on one sub-class of the persons benefited. The Commission would presumably agree that the mere existence of the substantial benefits would not immunize an unreasonable classification system or egregious discrimination.<sup>11</sup> It does serve, however, to [fol. 773] protect a system, reasonable on its face, that uses a "rough-and-ready" allocation measure, from attack on the ground that it is not precise.

Petitioner seeks to predicate infirmity in the PMA plan on the way it has been disadvantaged by developments

<sup>11</sup> Practices at San Francisco Bay Area Terminals, 2 U.S.M.C. 588, 593, 595-96 (1941), aff'd *California v. United States*, 46 F. Supp. 474 (N.D.Sal. 1942), aff'd 320 U.S. 577 (1944). See also Investigation of Certain Storage Practices, 6 F.M.B. 301, 316 (1961); Storage Practices at Longview, Washington, 6 F.M.B.; *California Stevedore & Ballast Co. v. Stockton Elevators, Inc.*, 8 F.M.B. 97 (1964).

subsequent to the original adoption of the PMA plan in January of 1961. In particular, petitioner complains of the interpretation that the tonnage basis of allocation should be based, not on the tonnage shown in the manifest as stated in the January, 1961 resolution, but on measurement tonnage in the case of automobiles. This ruling, announced in February, 1961, cannot be deemed unreasonable. Patently the manifest was not intended to be controlling in the sense of permitting a manifest to reduce assessments merely by referring to cargo on a weight basis, even though this had nothing whatever to do with the way ocean freight was determined—as is the case with petitioner which charters entire vessels. The record contains substantial evidence to show that PMA's January, 1961 resolution was to adopt a plan for allocating charges on the same revenue tonnage basis as had been used in PMA's dues. For general cargo and the bulk of commodities, revenue tons were measurement tons, except for certain bulk commodities manifested on dead weight tons. Treatment of automobiles as governed by measurement tons was merely the application of a 1958 ruling on PMA dues. That ruling in turn was based on industry practices in foreign trade and rejected efforts to report dues on weight basis by companies serving petitioner. Petitioner thereafter recognized and knowingly made reimbursement covering [fol. 774] the expenses of its stevedores in paying PMA dues on a measurement ton basis. The interpretation complained of is not unreasonable and it does not render the assessment system unreasonable.

Petitioner stresses that it will receive relatively little benefits under the union agreement as applied with PMA's assessments and that it will incur more than a 20% increase in discharge cost, tenfold the average increase for general cargo. The record made by petitioner is strong—though not as strong as petitioner puts it.<sup>12</sup>

<sup>12</sup> (1) Thus it appears that Volkswagens are transported on liners (13,672 out of 42,598 units in 1962), and here the increase in discharge cost has been absorbed by the carrier.

(footnote continued on next page)

We cannot say, however, that the case is such as to require reversal of the order. As already noted, a generally reasonable rule for assessing benefits may be maintained though it produces some instances of burdens wholly disproportionate to benefits.<sup>13</sup>

[fol. 775] In view of our ruling with respect to Section 17, it is apparent that there is no significant basis for the claim that petitioner is the victim of a discrimination that is unreasonable and hence unlawful under Section 16. Under the circumstances it is not necessary to consider whether and under what circumstances a rate practice that is purely "random" and hence inherently discriminatory may be challenged under Section 16 in the absence of a showing that competitive cargo has been preferred. *New York Freight Forwarders & Brokers Assoc. v. FMC*, 337 F.2d 289 (2d Cir. 1964), cert. denied, 380 U.S. 914 (1965).

- 
- (2) There is at least a question whether and to what extent the increase in stevedoring cost of private carriers may have been offset by decrease in cost of shipping by private carrier due to faster turn-around time.
  - (3) Another carrier of autos (Matson Transport) was enabled to make substantial saving in discharge cost. Thus automobiles in general may benefit more than petitioner in particular.
  - (4) The fund may have made it easier for MTC to eliminate a man on dockside.

<sup>13</sup> We are not to be taken as closing our eyes to petitioner's claim that it is the target of a combination in restraint of trade, leveled by the common carriers dominating PMA against the hostile economic interest of this large-scale importer of automobiles by private charter. That issue is not for the Commission or the court in this proceeding. It suffices to say that agreements not approved by the Commission are not protected from attack under the antitrust laws. *Carnation Co. v. Pacific Westbound Conference*, 383 U.S. 213 (1966).

[fol. 776]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
No. 19,840

---

VOLKSWAGENWERK AKTIENGESSELLSCHAFT, Petitioner,

v.

FEDERAL MARITIME COMMISSION and UNITED STATES OF  
AMERICA, Respondents,

PACIFIC MARITIME ASSOCIATION, MARINE TERMINALS  
CORPORATION, Intervenor.

---

On Petition to Review and Set Aside Order of the Federal Maritime Commission.

Before: McGowan, Tamm and Leventhal, Circuit Judges.

JUDGMENT—December 22, 1966

This case came on to be heard on the record from the Federal Maritime Commission, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the Federal Maritime Commission on review herein is affirmed.

Per Curiam

[File endorsement omitted]

[fol. 779] Clerk's Certificate to foregoing transcript (omitted in printing).



[fol. 780]

SUPREME COURT OF THE UNITED STATES

No. 1168, October Term, 1966

---

VOLKSWAGENWERK AKTIENGESELLSCHAFT, Petitioner,

v.

FEDERAL MARITIME COMMISSION, et al.

---

ORDER ALLOWING CERTIORARI—June 12, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.